

**AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER**

This Agreement is by and between **CITY OF SANDPOINT** ("Owner") and **Dreamland Skateparks LLC** ("Design/Builder").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

- 1.01. Design/Builder shall complete all Work as specified or indicated in the Contract Documents.
- 1.02. The Design-Builder shall provide a Phase I of the development to include the expansion of an existing 5,000 SF +/- concrete skate park and the complete design of the entire 18,000 SF expansion which is consistent with good engineering, construction, and environmental practices that meets or exceeds the Project Requirements, standards, guidelines, and procedures identified throughout the Contract.
- 1.03. The Design-Builder shall determine the full scope of the Project through a thorough examination of the Contract, site evaluation, and any reasonable inferences to be gathered from each.
- 1.04. The Design-Builder shall not rely on the physical descriptions contained in the Contract to identify all the Project components.
- 1.05. The Design/Builder shall be responsible for providing Phase I of the development to include the expansion of an existing 5,000 SF +/- concrete skate park and the complete design of the entire 18,000 SF expansion by providing:
 - A. all management, services, labor, material, and equipment necessary to design and construct the Project in accordance with the Project Requirements and overall Contract; and,
 - B. all regulatory coordination and authorizations (permits) as required by law to construct the facility; and,
 - C. Work is in strict compliance with applicable standards, specifications, and design requirements.

ARTICLE 2 - THE PROJECT

- 2.01. The Project, of which the Work under the Contract Documents may be the whole or only a part, is referenced as Travers Park All Wheeled Skatepark Expansion Phase I Design Build, and generally described as follows:

The primary purpose of the Project is to upgrade and expand the existing concrete skate park structure, inclusive of all-wheeled users.

ARTICLE 3 - CONTRACT TIMES

3.01. *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02. *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed on or before August 01, 2024, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions on or before September 30, 2024.

3.03. *Liquidated Damages – Not Used*

ARTICLE 4 - CONTRACT PRICE

- 4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 4.01.A below:

- A. *For all Work, a Lump Sum of:*

(\$ 300,000.00)

ARTICLE 5 - PAYMENT PROCEDURES

- 5.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

- A. *Progress Payments; Retainage:* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the 25th day of each month during performance of the Work as provided in Paragraphs 5.01.A.1 and A.2 below. All such payments will be measured by the Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with Paragraph 13.03.B of the General Conditions.

a. 95 percent of Work completed (with the balance being retainage).

b. 95 percent of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 13.02.A of the General Conditions), with the balance being retainage.

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design/Builder to 95 percent of the Contract Price (with the balance being retainage), less such amounts as Owner may withhold in accordance with Paragraph 13.03.B of the General

Conditions and less 150 percent of Owner's estimate of the value of the Work shown in the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

- B. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

- 6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of six percent per annum.

ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

- 7.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:
- A. Design/Builder has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposals, but excluding the documents described in paragraph 8.01.K.
 - B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Design/Builder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - E. Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - F. Design/Builder has considered the information known to Design/Builder; information commonly known to design/builders doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-conditions that may effect (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design/Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Design/Builder's safety precautions and programs.
 - G. The Owner has not provided information, explorations, or tests of subsurface or physical conditions at or contiguous to the Site relating to existing surface, materials, or subsurface structures at the Site. The Design/Builder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - H. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design/Builder has discovered in the Request for Proposals, Contract Documents, and the written resolution thereof by Owner is acceptable to Design/Builder.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

- A. This Agreement
- B. Performance Bond
- C. Payment Bond
- D. Other Bonds - *Not Used*
- E. Standard General Conditions of the Contract Between Owner and Design/Builder
- F. Supplementary Conditions
- G. Exhibit A – Owner Project Requirements and Drawings and Design/Builder's Proposal to original Project Contractor (Emerick Construction)
- H. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:
 - 1. Notice to Proceed;
 - 2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
 - 3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and
 - 4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

8.02. The documents listed in Paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).

8.03. There are no Contract Documents other than those listed above in this Article 8.

8.04. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.

9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by

law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.06. Design/Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.06:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

This Agreement will be effective on April 06, 2023 (which is the Effective Date of the Agreement).

OWNER:

Kate M. Rognstad

By: for Shelby Rognstad, Mayor

[CORPORATE SEAL]

Attest:

[Signature]

Address for giving notices:

City of Sandpoint, City Clerk

1123 Lake Street

Sandpoint, Idaho 83864

DESIGN/BUILDER:

DocuSigned by:
Daniel Scott
D1D794348295401

By:

Daniel Scott

Member

[CORPORATE SEAL]

Attest:

Address for giving notices:

2150 SE Hwy 101

Pmb 384

Lincoln City, Oregon 97367

Engineer License No. or
Certificate No.:

(Where applicable)

State:

Contractor License No.:

PWC-C-16054-B-4

Idaho

(Where applicable)

State:

Designated Representative:

Name: Maeve Nevins-Lavtar

Title: Parks Planning & Development
Manager

Address: 1123 Lake Street

Sandpoint, Idaho 83864

Phone: 208-946-2711

Facsimile:

Designated Representative:

Name: Daniel Scott

Title: Member

Address: 2150 SE Hwy 101 Pmb 384

Lincoln City, Oregon 97367

503-577-9277

Phone:

Facsimile:

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

STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN
OWNER AND DESIGN/BUILDER

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These General Conditions have been prepared for use with either one of the two Agreements between Owner and Design/Builder (EJCDC D-520 and D-525, 2009 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition) are also carefully interrelated with the wording of these General Conditions.

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TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY	4
1.01 Defined Terms	4
1.02 Terminology.....	8
ARTICLE 2 – PRELIMINARY MATTERS.....	8
2.01 Delivery of Bonds.....	8
2.02 Commencement of Contract Times; Notice to Proceed	9
2.03 Starting the Work	9
2.04 Before Starting the Work.....	9
2.05 Initial Conference	10
2.06 Initial Acceptance of Schedules	10
ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 Intent	10
3.02 Reference Standards	10
3.03 Resolving Discrepancies	11
3.04 Amending and Supplementing Contract Documents.....	11
3.05 Reuse of Documents.....	11
3.06 Electronic Data	12
ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS.....	12
4.01 Availability of Lands.....	12
4.02 Differing Site Conditions.....	13
4.03 Reference Points	13
4.04 Hazardous Environmental Condition at Site	13
ARTICLE 5 – BONDS AND INSURANCE	14
5.01 Performance, Payment and Other Bonds	14
5.02 Licensed Sureties and Insurers	15
5.03 Certificates of Insurance.....	15
5.04 Design/Builder's Insurance.....	15
5.05 Owner's Liability Insurance.....	17
5.06 Property Insurance	17
5.07 Waiver of Rights	18
5.08 Receipt and Application of Insurance Proceeds.....	19
5.09 Acceptance of Bonds and Insurance; Option to Replace	19
5.10 Partial Utilization, Acknowledgment of Property Insurance	20
ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES	20
6.01 Design Professional Services	20
6.02 Supervision and Superintendence of Construction.....	21
6.03 Labor, Working Hours.....	21
6.04 Services, Materials, and Equipment	21
6.05 Progress Schedule.....	22
6.06 Concerning Subcontractors, Suppliers, and Others	22
6.07 Patent Fees and Royalties	23
6.08 Permits.....	23

6.09 Laws or Regulations..... 24

6.10 Taxes..... 24

6.11 Use of Site and Other Areas 24

6.12 Record Documents 25

6.13 Safety and Protection 25

6.14 Safety Representative 26

6.15 Hazard Communication Programs..... 26

6.16 Emergencies 26

6.17 Submittals..... 26

6.18 Continuing the Work 27

6.19 Post-Construction Phase 27

6.20 Design/Builder's General Warranty and Guarantee..... 27

6.21 Indemnification 28

ARTICLE 7 – OTHER CONSTRUCTION 28

7.01 Related Work at Site..... 28

7.02 Coordination..... 29

7.03 Legal Relationships 29

ARTICLE 8 – OWNER'S RESPONSIBILITIES 30

8.01 General 30

8.02 Insurance 31

8.03 Limitations on Owner's Responsibilities..... 31

8.04 Undisclosed Hazardous Environmental Condition 31

8.05 Resident Project Representation..... 31

8.06 Owner's Consultant 31

8.07 Compliance with Safety Program 31

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS 31

9.01 Authorized Changes in the Work..... 31

9.02 Unauthorized Changes in the Work 31

9.03 Claims 32

9.04 Execution of Change Orders 32

9.05 Notice to Sureties 32

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK..... 32

10.01 Cost of the Work..... 32

10.02 Cash Allowances 35

10.03 Unit Prices..... 35

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES 36

11.01 Change of Contract Price 36

11.02 Change of Contract Times 37

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION 38

12.01 Notice of Defects 38

12.02 Access to Construction 38

12.03 Tests and Inspections 38

12.04 Uncovering Construction 39

12.05 Owner May Stop Construction	39
12.06 Correction or Removal of Defective Construction	39
12.07 Correction Period.....	39
12.08 Acceptance of Defective Construction	40
12.09 Owner May Correct Defective Construction	40
 ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION.....	41
13.01 Schedule of Values.....	41
13.02 Application for Progress Payment.....	41
13.03 Progress Payments	42
13.04 Design/Builder's Warranty of Title	43
13.05 Substantial Completion	43
13.06 Partial Utilization	43
13.07 Final Inspection.....	44
13.08 Final Payment	44
13.09 Final Completion Delayed.....	45
13.10 Waiver of Claims.....	45
 ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION	45
14.01 Owner May Suspend Work.....	45
14.02 Owner May Terminate for Cause	45
14.03 Owner May Terminate for Convenience	46
14.04 Design/Builder May Stop Work or Terminate	47
 ARTICLE 15 – DISPUTE RESOLUTION.....	47
15.01 Methods and Procedures	47
 ARTICLE 16 – MISCELLANEOUS.....	47
16.01 Giving Notice	47
16.02 Computation of Times	47
16.03 Cumulative Remedies	48
16.04 Survival of Obligations	48
16.05 Controlling Law	48



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

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.
 2. *Agreement*: The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.
 3. *Application for Payment*: The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bonds*: Performance and payment bonds and other instruments of security.
 6. *Change Order*: A written order which is signed by Design/Builder and Owner which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 7. *Claim*: A demand or assertion by Owner or Design/Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.
 8. *Conceptual Documents*: The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.

9. *Construction*: The part of the Work that is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.
10. *Construction Subagreement*: A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.
11. *Contract*: The entire and integrated written agreement between Owner and Design/Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*: Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.
13. *Contract Price*: The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.
14. *Contract Times*: The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with Paragraph 13.08.
15. *Design/Builder*: The individual or entity with whom Owner has entered into the Agreement.
16. *Design Subagreement*: A written agreement between Design/Builder and a design professional for provision of Design Professional Services.
17. *Design Professional Services*: That part of the Work comprised of services relating to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.
18. *Drawings*: Those portions of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.
19. *Effective Date of the Agreement*: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Field Order*: A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *Hazardous Environmental Condition*: The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

22. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
23. *Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
24. *Liens*: Charges, security interests or encumbrances upon real property or personal property.
25. *Milestone*: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
26. *Notice of Award*: The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.
27. *Notice to Proceed*: A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.
28. *Owner*: The individual or entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed.
29. *Owner's Consultant*: An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.
30. *Partial Utilization*: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
31. *PCBs*: Polychlorinated biphenyls.
32. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
33. *Project*: The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
34. *Proposal*: The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.
35. *Radioactive Material*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

37. *Resident Project Representative*: The authorized representative of Owner who may be assigned to the Site or any part thereof.
38. *Schedule of Values*: A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.
39. *Site*: Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.
40. *Specifications*: The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
41. *Subcontractor*: An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.
42. *Submittal*: A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.
43. *Substantial Completion*: The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
44. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
45. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.
46. *Unit Price Work*: Work to be paid for on the basis of unit prices.
47. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.
48. *Work Change Directive*: A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a

Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B are not defined terms, but when used in the Contract Documents have the indicated meanings.

B. *Intent of Certain Terms or Adjectives:*

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
4. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.
5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Design/Builder delivers the executed Agreements to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with Paragraph 5.01.A.

- B. *Evidence of Insurance:* Before any Work is started, Design/Builder and Owner shall each deliver to the other those certificates of insurance that Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. Unless agreed to in writing by Owner and Design/Builder, the Contract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.03 *Starting the Work*

- A. Design/Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04 *Before Starting the Work*

- A. *Design/Builder's Review of Conceptual Documents:* Before undertaking the Work, Design/Builder shall carefully study and compare those Conceptual Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Conceptual Documents unless Design/Builder knew thereof.
- B. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:
1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
 3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
 4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 *Initial Conference*

- A. Within twenty days after the Contract Times start to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to Paragraph 8.01.A.6 and other matters.
- B. At the initial conference Owner and Design/Builder each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.06 *Initial Acceptance of Schedules*

- A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with Paragraph 2.04.B. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.
 - 1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.
 - 2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.
 - 3. Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents including but not limited to the Conceptual Documents, the Drawings, and the Specifications to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Design/Builder will furnish or perform all labor, documentation, services, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws or Regulations.

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

3.03 *Resolving Discrepancies*

- A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to Paragraph 6.17.B.
- B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 1. Owner's approval of required Submittals (pursuant to Paragraph 6.17.B);
 2. A Work Change Directive;
 3. A Change Order;
 4. A Field Order.

3.05 *Reuse of Documents*

- A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement are for Design/Builder's own use, and Design/Builder shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Design/Builder to further compensation at rates to be agreed upon by Owner and Design/Builder.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.
- B. Upon reasonable written request, Owner shall furnish Design/Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's

interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.

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

4.02 *Differing Site Conditions*

- A. Design/Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.
- C. No request by Design/Builder for an equitable adjustment under Paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.
- D. The provisions of this Paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 *Reference Points*

- A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to Paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Hazardous Environmental Condition at Site*

- A. Design/Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design/Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible.
- B. If Design/Builder encounters a Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

- C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.
- D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this Paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- F. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this Paragraph 4.04.F shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment and Other Bonds*

- A. Design/Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design/Builder shall also furnish such other Bonds as are required by the Contract Documents.

- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any Bond furnished by Design/Builder is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B and 5.02, Design/Builder shall within twenty days thereafter substitute another Bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Design/Builder shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Design/Builder shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured or loss payee) which Design/Builder is required to purchase and maintain.
- B. Owner shall deliver to Design/Builder, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Design/Builder's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Design/Builder's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design/Builder.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Design/Builder's liability under the indemnities granted to Owner and others in the Contract Documents.

5.04 *Design/Builder's Insurance*

- A. Design/Builder shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the

Contract Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. Claims based on the provision of professional services, including but not limited to the design services performed by Design/Builder, to be insured under a professional liability insurance policy or endorsement;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;
4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by paragraph 5.04.A shall:

1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds Owner and Owner's Consultants and any other persons or entities indicated in the Supplementary Conditions (subject to any customary exclusion in respect of professional liability), all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, and employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. Include at least the specific overages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. Include contractual liability insurance covering Design/Builder's indemnity obligations under Paragraphs 6.11 and 6.21;
4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to Paragraph 5.03 will so provide);

5. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with Paragraphs 12.06 and 12.07; and
7. Include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Design/Builder shall furnish Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Design/Builder under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Construction at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance will:
 1. Include the interests of Owner, Owner's Consultant, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. Be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and damage to the Construction, temporary buildings, falsework, and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;
 5. Allow for partial utilization by Owner of the Work;

6. Include testing and start-up; and
 7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design/Builder with thirty days' written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Design/Builder, Subcontractor, or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Design/Builder intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Owner's Consultant, Design/Builder, Subcontractors, Suppliers, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Design/Builder waive all rights against each other and their respective officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Consultant, Subcontractors, Suppliers, and all other individuals or entities identified in the Supplementary Conditions as insureds or loss payees under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Design/Builder, Subcontractors, and Suppliers and the officers, directors, members, employees and agents of any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and
2. Loss or damage to the completed Project or any part thereof caused by, arising out of, or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 13.06, after Substantial Completion pursuant to Paragraph 13.05, or after final payment pursuant to Paragraph 13.08.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Design/Builder, Subcontractors, Owner's Consultant, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Design/Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.04.C. Owner and Design/Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurance*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

- A. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design/Builder under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar conditions at the same time and in the same locality.

- B. *Preliminary Design Phase:* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;
2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in Paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;
4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;
5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;
6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in Paragraphs 2.06.A.1 and 2.06.A.2; and
7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

- C. *Final Design Phase:*

After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the format recommended by the Construction Specifications Institute);
2. Provide technical criteria, written descriptions, and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;
3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in Paragraphs 2.06.A.1 and 2.06.A.2; and
4. Identify any deviations from other Contract Documents in accordance with Paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

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

6.03 Labor, Working Hours

- A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld).

6.04 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified by Owner, or in the Drawings or Specifications, or if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Progress Schedule

- A. Design/Builder shall adhere to the progress schedule established in accordance with Paragraph 2.06.A as it may be adjusted from time to time as provided below:
 - 1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11.02. Such adjustments may only be made by a Change Order.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Design/Builder has reasonable objection.
- B. Design/Builder shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity;
 - 2. shall create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.
- C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers, and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.
- D. Design/Builder shall require all Subcontractors, Suppliers, and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design/Builder.

- E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other loss payees (and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

- A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.
- B. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device except those required by the Conceptual Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, members, partners, employees or agents, Subcontractors and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Conceptual Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.08 Permits

- A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design/Builder shall pay all

charges of utility owners for connections for providing permanent service to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

- A. Design/Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.
- B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations not known on the Effective Date having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

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

6.11 Use of Site and Other Areas

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

- B. *Removal of Debris:* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.
- C. *Cleaning:* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

- A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals will be delivered to Owner.

6.13 Safety and Protection

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

- D. Design/Builder shall inform Owner of the specific requirements of Design/Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder.
- F. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with Paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

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

6.17 Submittals

- A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- B. Owner's review and approval of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate

written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

- C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Design/Builder.

6.18 Continuing the Work

- A. Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

- A. Design/Builder shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.
2. Assist Owner in training staff to operate and maintain the Work.
3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty and Guarantee

- A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective.

- B. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or
2. normal wear and tear under normal usage.

- C. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;

4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

6.21 Indemnification

- A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants, and the officers, members, directors, partners, employees, agents, other consultants and subcontractors of each from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom) but only to the extent caused by any negligent act or omission of Design/Builder, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.
- B. In any and all claims against Owner, Owner's Consultant, or any of their respective consultants, agents, officers, members, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design/Builder, any Subcontractor, any Supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design/Builder or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.
- C. The indemnification obligations of Design/Builder under Paragraph 6.21.A shall not extend to the liability of Owner's Consultant, and their officers, directors, members, partners, employees, agents, other consultants, and subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

- A. Owner may perform other Work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and
 2. if Owner and Design/Builder are unable to agree on entitlement to or on the extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, Design/Builder may make a Claim therefor as provided in Article 9.

- B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design/Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
 - 2. The specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. The extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

7.03 Legal Relationships

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Design/Builder for the reasonable direct delay and disruption costs incurred by Design/Builder as a result of the other contractor's wrongful actions or inactions.
- C. Design/Builder shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Design/Builder's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:

1. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design/Builder;
2. If requested in writing by Design/Builder, furnish reasonable evidence satisfactory to Design/Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design/Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days notice to the Owner;
3. Make payments to Design/Builder promptly when they are due as provided in Paragraph 13.03 and 13.08;
4. Furnish the Site as set forth in Paragraph 4.01.A;
5. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
 - f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;
 - g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and
 - h. Identify all reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings known to owner of physical conditions relating to existing surface or subsurface structures at the Site, and any information or data known to Owner concerning underground facilities at the Site.
6. Review Submittals subject to Owner review pursuant to Paragraph 6.17.A; and
7. Provide information known to Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

- A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

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

8.04 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in Paragraph 4.04.

8.05 Resident Project Representation

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

8.06 Owner's Consultant

- A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

8.07 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design/Builder's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

- A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended,

modified and supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Construction as provided in Paragraph 12.04.

9.03 Claims

- A. *Notice:* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to Paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.
- B. *Documentation:* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by Paragraph 9.03.A.
- C. *Decision:* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by Paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.
- D. *Time Limit Extension:* The time limits of Paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.

9.04 Execution of Change Orders

- A. Owner and Design/Builder shall execute appropriate Change Orders covering:
 - 1. Changes in the Work which are (i) ordered by Owner pursuant to Paragraph 9.01, (ii) required because of acceptance of defective Construction under Paragraph 12.08 or Owner's correction of defective Work under Paragraph 12.09 or (iii) agreed to by the parties; and
 - 2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.

9.05 Notice to Sureties

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

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the

Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall not include any of the costs itemized in Paragraph 10.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.
 - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.
 - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this Paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.
3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to Paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.
4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
6. Supplemental costs including the following items:
 - a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.

- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.
- c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.
- e. Deposits lost for causes other than negligence of Design/Builder, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. Costs Excluded:

The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Design/Builder's fee.

2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.
 3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.
 4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.01.A.
- C. Design/Builder's Fee: When all the Work is performed on the basis of cost-plus, Design/Builder's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in Paragraph 11.01.C.
- D. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 Cash Allowances

- A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:
1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price

Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner.

- B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.
- C. Design/Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:
 - 1. the quantity of any item of Unit Price Work performed by Design/Builder differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes it is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with Paragraph 9.03.A.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 10.03); or
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.01.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in Paragraph 11.01.C).
- C. *Design/Builder's Fee:* The Design/Builder's fee for overhead and profit on Change Orders shall be determined as follows:
 - 1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;
 - b. For costs incurred under Paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and Design/Builder will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design/Builder's fee by an amount equal to five percent of such net decrease; and
 - e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 Change of Contract Times

- A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to Paragraph 9.03.A.
- B. *Delays Beyond Design/Builder's Control:* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.
- D. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then

Design/Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C.

- E. Owner and Owner's Consultant shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design/Builder on or in connection with any other project or anticipated project.
- F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

- A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

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

12.03 Tests and Inspections

- A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.
- B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.
- C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation.

- D. Uncovering Construction as provided in Paragraph 13.03.E shall be at Design/Builder's expense unless Design/ Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

- A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.
- B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

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

12.06 Correction or Removal of Defective Construction

- A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 Correction Period

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this Paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Construction

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 Owner May Correct Defective Construction

- A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with Paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and

machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this Paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9.
- D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 Application for Progress Payment

- A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.
- B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.
- C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

13.03 Progress Payments

A. *Procedure:* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Design/Builder.
2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment:* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged requiring correction or replacement; or
2. the Contract Price has been reduced by Change Order; or
3. Owner has been required to correct defective Construction or complete Work in accordance with Paragraph 12.09.A; or
4. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.A.; or
5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or
6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
7. There are other items entitling Owner to a set off against the amount for which application is made.

- C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder remedies the reason for such action.
- D. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

13.04 Design/Builder's Warranty of Title

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

13.05 Substantial Completion

- A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.
- B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

13.06 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/Builder's performance of the remainder of the Construction, subject to the following:
 - 1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder and Owner will follow the procedures of Paragraph 13.05 for that part of the Construction.

2. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

13.07 Final Inspection

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

13.08 Final Payment

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in Paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

C. *Payment Becomes Due:* Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 Final Completion Delayed

A. If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in Paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to Paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and
2. A waiver of all Claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design/Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.06.A as adjusted from time to time pursuant to Paragraph 6.05).
 2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.
 3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of Paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- C. Notwithstanding Paragraph 14.02.B, Design/ Builder's services will not be terminated if Design/Builder begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

14.03 Owner May Terminate for Convenience

- A. Upon seven days' written notice to Design/Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall be paid (without duplication of any items) for:
1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection

with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with termination of contracts with Subcontractors, Suppliers and others); and
4. Reasonable expenses directly attributable to termination.

B. Except as provided in Paragraph 14.03.C, Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14.04 Design/Builder May Stop Work or Terminate

- A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in Paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this Paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 Methods and Procedures

- A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no such method and procedure has been set forth, Owner and Design/Builder may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.02 Computation of Times

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

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

16.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
1. Laws or Regulations; or
 2. any special warranty or guarantee; or
 3. other provisions of the Contract Documents.
- B. The provisions of Paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 Survival of Obligations

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

16.05 Controlling Law

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

PART 1 – GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract Between OWNER and Design/Builder, EJCDC D-700 (2009 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

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

PART 2 – MODIFICATIONS OF THE GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

Add the following paragraphs immediately after Paragraph 1.01:

- 49. *As Shown* – “as shown” shall mean a specific reference to the Contract Drawings, equivalent to “as shown on the Contract Drawings.”
- 50. *Final Acceptance* – OWNER’s written acknowledgement that Design/Builder has achieved Final Completion as provided herein.
- 51. *Final Completion* – All obligations of Design/Builder under this Contract have been completed except for obligations that OWNER has waived or excused in writing and except for obligations of Design/Builder that survive termination of this Contract, such as warranty and indemnity.
- 52. *Owner* – OWNER’s representative responsible for management and oversight of Design/Builder and coordination with the Design/Builder during construction. The RPR responsibilities in the Contract Documents shall also be performed by the Owner. OWNER may engage an inspector to observe construction activities, but the inspector shall not have the authority allocated to either the Owner or the RPR.
- 53. *Punch List* – A specific itemized list of defects provided by the OWNER to the Design/Builder that the Design/Builder shall address and complete the list to OWNER’s satisfaction prior to Final Acceptance with the exception of non-critical punch list items that are agreed upon by OWNER and Design/Builder.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.04 Before Starting the Work

Add the following new Paragraph 2.04.C.

- C. Design/Builder shall deliver to OWNER, with copies to the Owner and each additional insured identified in the Supplementary Conditions, certificates of insurance (or other evidence requested by OWNER) that Design/Builder is required to purchase and maintain in accordance with Paragraphs 5.03 and 5.04.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01 Intent

Add a new Paragraph 3.01.C as follows:

The Proposal submitted by Design/Builder with its Proposal submitted by Design/Builder to the original Contractor (Emerick Construction) and accepted by OWNER will be incorporated as a Contract Document, will become a part of the complete contract and the concepts contained therein shall not be materially changed unless authorized by the OWNER. Interpretation and correct application of Contract Provisions are the responsibility of the Design/Builder. Changes in the design by the Design/Builder to meet contract requirements or correct defects or deficiencies, that do not materially change the Proposal, are the responsibility of the Design/Builder and are not considered Changes in the Work and no adjustment will be allowed to contract price or time. Changes in Work to meet contract requirements, that materially change the concepts in the Proposal, shall be reviewed by the OWNER. The Design/Builder may request a written change order for any such change, pursuant to the provisions of the Agreement.

SC-3.05.A Reuse of Documents

Delete the second sentence in Paragraph 3.05.A and replace with the following:

OWNER may make and retain copies of Project Documents for information and reference in connection with use on the Project by OWNER. Design/Builder and any Design Consultants grant OWNER a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the OWNER including but not limited to, commissioning, operations, maintenance, modifications, replacements or alterations.

SC-3.06.A Electronic Data

Add the following sentence after the first sentence in Paragraph 3.06.A:

OWNER will furnish Design/Builder one electronic .pdf format via email or other file transfer protocol. One paper copy will be furnished only upon request of the Design/Builder.

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

SC-4.01.C. Availability of Lands.

Add the following immediately following Paragraph 4.01.C:

No land on Site is available for temporary construction facilities or staging or storage of materials and equipment.

SC-4.02. Differing Site Conditions.

Add the following new paragraphs immediately after Paragraph 4.02.D:

- E. OWNER does not represent that any information provided in the Contract shows completely all the existing subsurface conditions and do not guarantee any interpretation of facts or opinions in the reports or that the information shown on the Contract Documents will accurately describe the actual subsurface conditions which may be encountered. Design/Builder must assume all responsibility for deductions and conclusions which may be made as to the nature of the materials to be encountered and/or excavated, the difficulties of making and maintaining the required pile driving, and of doing other construction affected by subsurface conditions at the site of the construction.
- F. Design/Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order under this Differing Site Condition Section shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design/Builder with respect to the condition of the Site, justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design/Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. For Differing Site Conditions involving Utilities, Design/Builder shall describe the nature of the investigations undertaken and explain why it could not have been expected to discover such Utility in the course of its Investigations.
- G. Underground facilities in and adjacent to the project site may not be completely shown on drawings that are part of the Reference Documents. Design/Builder will need to contact all appropriate departments for locates when needed.

ARTICLE 5 – BONDS AND INSURANCE

Omit Article 5 in its entirety and replace with SC-Exhibit 1, Article 5, Bonds and Insurance.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

SC-6.01 Design Professional Services.

Modify Paragraph-6.01.B.2 to reference "Paragraph 8.01.A.5.a-h" rather than "Paragraph 8.01.A.6.a-g".

SC-6.02 Supervision and Superintendence of Construction.

Add the following new Paragraphs 6.02.C and 6.02.D immediately after GC-6.02.B:

- C. The initial appointment of the Project Manager and Engineer of Record and any removal and subsequent appointment shall be subject to the prior approval of the Owner. For reasonable cause, Owner may, upon notice to Design/Builder, require Design/Builder to remove (or cause to be removed) and replace the resident superintendent from the Site. Once removed such personnel shall no longer be involved with the Work in any capacity.
- D. Design/Builder is required to utilize the key staff included in its proposal and approved by OWNER to perform the Work. Any substitutions of key staff shall be subject to the prior approval of the Owner. The qualifications of the proposed key staff were an important factor in selecting the Design/Builder to perform the Work, and any substitutions not approved by OWNER will result in additional costs and losses incurred by OWNER.
- E. The Project Manager shall serve as the single-point-contact for the Design-Builder, remain committed to a partnering relationship with the Owner, and have authority to make decisions on behalf of the Design- Builder. The Design-Builder's Project Manager shall coordinate with the Owner in a mutually agreeable format and frequency. Coordination shall be documented and include schedule progress, current risks, outstanding issues, submittal and transmittal status, quality, and safety.

SC-6.03 Labor, Working Hours.

Add the following new Paragraph 6.03.C immediately after GC-6.03.B:

- C. For reasonable cause, Owner may, upon notice to Design/Builder, require Design/Builder to remove (or cause to be removed) any personnel performing any aspect of the Work. Once removed such personnel shall no longer be involved with the Work in any capacity.

SC-6.05.A Progress Schedule.

Delete the "or".

SC-6.12 Record Documents.

Delete Paragraph 6.12.A and replace it with the following:

- A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. Locations of all underground conduits, piping and other utilities will also be shown on the record documents, in order that field-located utilities are accurately shown. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the Owner for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will

be delivered to OWNER.

- B. At the beginning of the construction, Design/Builder shall set aside one (1) complete set of full-size prints of the Contract Drawings, upon which it shall record or cause its various subcontractors to record, all deviations in construction, underground utilities and any deviations due to change orders or field located utilities and other subsurface facilities which Design/Builder has installed as part of the Work. Notations and changes shall be done in a neat and legible manner acceptable to the Owner. Upon completion of the Work, Design/Builder shall deliver the set of marked-up prints to the Owner before final payment will be made.

SC-6.20 Design/Builder's General Warranty and Guarantee.

Add the following new Paragraph 6.20.D:

- D. No provision of any instructions, warranties or guarantees will be effective to assign to OWNER's Consultant, OWNER, Owner, RPR or any of their consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 8.03.

SC-6.21 Indemnification.

Delete Paragraph 6.21.A in its entirety and substitute the following:

- A. To the fullest extent permitted by Laws and Regulations, Design/Builder shall indemnify and hold harmless OWNER and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, expenses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) to the extent such claim, cost, loss, expense or damages are caused by or relate to any actual or alleged negligent act or omission of Design/Builder, any subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

SC-6.21 Indemnification.

Delete Paragraph 6.21.C in its entirety and substitute the following:

- C. The defense and indemnification obligations set forth in Paragraph SC-6.21.A shall not extend to the liability of OWNER's Consultant, Engineer, Owner and their officers, directors, members, partners, employees, agents, other consultants and subcontractors arising out of the giving of directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; provided, however, that this provision shall not operate to reduce or limit Design/Builder's primary responsibility for the adequacy of its construction methods, means, procedures or safety practices or its responsibility for the adequacy of its design. If there is a claim for a joint negligent act, error or

omission of the Design/Builder or its design consultant and the OWNER, the indemnification, defense and hold harmless provisions shall be apportioned on a comparative fault basis.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

SC-8.08 OWNER’s Representative

Add the following new Paragraph 8.08:

Owner will be OWNER’s representative during the construction period. The duties and responsibilities and the limitations of authority of the Owner as OWNER’s representatives during construction are set forth in the Contract Documents. OWNER may engage an inspector to observe construction activities, but the inspector shall not have the authority allocated to either the Owner or the RPR.

SC-8.10 Authorized Variations in Work

Add the following new Paragraph 8.10:

Owner may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on Design/Builder, who shall perform the Work involved promptly. If OWNER or Design/Builder believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 9.03 of the General Conditions. The Owner will refer changes to the OWNER for due process and assist to expedite resolution to the proposed changes. See SC15.01.

SC-8.03 Limitations on Owner’s Responsibilities

Add the following new Paragraph 8.03:

- A. Owner will not supervise, direct, control, or have authority over or be responsible for Design/Builder’s means, methods, techniques, sequences, design, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Design/Builder’s failure to perform the Work in accordance with the Contract Documents.
- B. Owner will not authorize any significant deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items). Owner will not be responsible for the acts or omissions of Design/Builder or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- C. Owner’s review of the final Application for Payment and accompanying documentation and all

maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Design/Builder will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

SC 9.03.A Notice:

Revise Paragraph 9.03.A to add the following at the end of the paragraph:

Failure to strictly comply with the 15 day time limit for written notice of intent to make a Claim shall bar the claiming party from any adjustments to Contract Price or Contract Time, due to the loss of the other party's ability to take mitigation actions to minimize any costs or delays. The parties agree that this provision shall be enforceable pursuant to its terms without need to prove any actual prejudice due to non-compliance with the time limits.

SC 9.03.B Documentation

Revise Paragraph 9.03.B to add the following at the end of the paragraph:

Failure to strictly comply with the 30-day requirement to provide substantiating documentation shall bar the claiming party from any adjustments to Contract Price or Contract Time, due to the loss of the other party's ability to take mitigation actions to minimize any costs or delays. The parties agree that this provision shall be enforceable pursuant to its terms without need to prove any actual prejudice due to non-compliance with the time limits.

SC 9.03.D Time Limit Extension

Delete Paragraph 9.03.D in its entirety and substitute the following:

The time limits of Paragraphs 9.03.A, 9.03.B and 9.03.C may be extended by mutual written agreement which is required to include a specific reference by citation to the applicable paragraph being revised. Except as provided in the proceeding sentence, both parties agree to waive any claim for additional payment or time extension if written notification and substantiating documentation was not provided in strict compliance with the terms of the Contract. The parties agree that the party seeking to enforce non-compliance with applicable time limits to bar claims is not obligated to prove any specific prejudice from the lack of strict compliance with Contract time limits.

SC 9.06 Accurate and Detailed Records

Add the following new paragraph 9.06:

If Design/Builder believes additional compensation or time is warranted, then it must immediately begin keeping complete, accurate and specific daily records concerning every detail of the potential claim including actual costs incurred. Failure to keep an accurate and detailed record of the actual costs incurred shall be a bar to any recovery to any alleged entitlement to adjustments to Contract Price or Contract Times which are based on actual costs incurred. In computing damages, or costs claimed for a change order, or for any other claim against Owner for additional time, compensation or both, Design/Builder must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permissible to show damages.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

SC 11.01.A Change of Contract Price.

Revise Paragraph 11.02.A to add the following at the end of the last

sentence: “and 9.03.B.”

SC 11.02.A Change of Contract Times.

Revise Paragraph 11.02.A to add the following at the end of the last

sentence: “and 9.03.B.”

SC 11.02.D Change of Contract Times.

Revise line 7 to change the reference “Paragraph 11.02.C” to “Paragraph 11.02.D.”

SC 11.02.F Change of Contract Times.

Revise Paragraph 11.02.F to add the following at the end of the paragraph:

Delays due to labor strife, transportation shortages, delays in transit, and delays at Design/Builder’s facilities are deemed to be within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

SC 12.01.A Notice of Defects

Insert “or Design Professional Services” after “Construction” at lines 1 and 2.

SC 12.03 Tests and Inspections

Subparagraph 12.03.C, line 2, replace "Contractor" with "Design/Builder"

Subparagraph 12.03.D, line 1, replace "13.03.E" with "12.03.C"

SC 12.04.B Uncovering Construction

Revise line 5 to insert "or Design Professional Services related to such Construction" after "Construction."

Revise line 12 to insert "and Design Professional Services related to such Construction and after "Construction." Delete "is" after "Construction."

SC 12.05.A OWNER May Stop Construction

Revise line 1 to insert "or Design Professional Services" after "Construction."

SC 12.06.A Correction or Removal of Defective Construction or Design Professional Services

Revise line 2 to insert "or Design Professional Services" after the first "Construction."

Revise line 6 to insert "Design Professional Services or" prior to "Construction."

SC 12.08.A Acceptance of Defective Construction or Design Professional Services

At line 1, insert "or Design Professional Services" after "Construction."

At line 5, insert "or Design Professional Services" after "Construction."

At line 8, insert "or Design Professional Services" after "Construction."

SC 12.09 OWNER May Correct Defective Construction or Design Professional Services

Subparagraph A. At line 2, insert "or Design Professional Services" after "Construction."

SC 12.10 Correction Period for Design Professional Services

Add the following new Paragraph 12.10:

Notwithstanding any shorter period referenced in these provisions, the correction period for any deficient Design Professional Services shall continue until one year after the date of Substantial Completion of the Work.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

SC 13.02.A Progress Payments

Revise the first line to replace: "On or about the date" with "On the date established in the"

SC 13.03.A Progress Payments

Delete Paragraph 13.03.A in its entirety and substitute the following:

- A. Procedures: Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:
 - 1. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.
 - 2. With each application for progress payment, Design/Builder shall provide a copy of their "in-progress" as-built drawings and material certifications. Design/Builder shall maintain Record Documents on the job site consisting of a complete set of drawings, survey line and grade books, and all Contract Documents. Design/Builder shall record (on Record Documents) and keep current on a daily basis all changes in location (both vertical and horizontal), material, equipment, and all changes in the Work. Design/Builder shall record all horizontal and vertical locations of all utilities encountered. Progress payment may be withheld by the Owner if "in-progress" as-built drawings and material certification are not received with each application for progress payment. Progress payment applications not supported by documentation certifying Engineer of Record's direction may be denied; sealed plan sheets, specifications, submittal approvals, and/or approved shop drawings are acceptable forms of direction.

SC 13.06.B Partial Utilization

Add the following new Paragraph 13.06.B:

- B. OWNER may at any time request Design/Builder in writing to permit OWNER to take over operation of any such part of the Construction although it is not substantially complete. OWNER and Design/Builder shall make an inspection of that part of the Construction to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If Design/Builder does not object in writing to OWNER that such part of the Construction is not ready for separate operation by OWNER, OWNER will finalize the list of items to be completed or corrected and will deliver such lists to Design/Builder together with a written division of responsibilities pending final payment between OWNER and Design/Builder with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Construction which will become binding upon OWNER and Design/Builder at the time when OWNER takes over such operation. During such operation and prior to Substantial Completion of such part of the Construction, OWNER shall allow Design/Builder reasonable access to complete or correct items on said list and to complete other related Construction.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

SC 14.03.B. Owner May Terminate for Convenience.

Delete “Except as provided in Paragraph 14.03.C,”

ARTICLE 15 – DISPUTE RESOLUTION

SC 15.01 Methods and Procedures.

Add the following new paragraphs as follows:

- B. In the event either party believes a critical problem exists that should not or cannot be resolved within the regular timetable of the dispute resolution procedures in this Contract, a senior management representative of either party may contact their counterpart in the other Party to address immediately any critical problem and seek appropriate resolution.
- C. When a dispute has arisen and negotiations between the parties have reached an impasse, either party may give the other party written notice of the dispute, the parties shall attempt to resolve the dispute promptly by negotiations between senior management representatives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for the matter. Within ten (10) days after delivery of the notice, the receiving party shall submit to the other a written response. Thereafter, the representatives shall confer in person or by telephone promptly to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. Any Contract durations for dispute resolution activities will be extended by the number of days the parties utilize this senior management resolution step. If the dispute has not been resolved by negotiation between the representatives within fifteen (15) days of the notice, the parties may utilize any dispute resolution remedies or procedures set forth in the Contract.
- D. Submittal of the dispute to mediation shall operate to suspend obligation to file an arbitration demand under the Contract, until such time as the mediation session is concluded or cancelled by either party.
- E. All claims, counterclaims, disputes or other matters in question between OWNER and Design/Builder arising out of or relating to the Contract Documents or breach thereof not resolved through negotiation or mediation shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.
- F. In the event it becomes necessary to enforce any terms of the Contract, the prevailing party shall be entitled to recover all of its reasonable attorneys’ fees, expenses, costs, arbitration fees and arbitrator expenses.
- G. Senior management of each party will support the development and implementation of conflict

avoidance and expedited conflict resolution procedures for this Contract in the event it appears necessary or beneficial to facilitate more effective project performance and communications. As a critical element of these procedures, each party agrees to delegate authority to appropriate staff levels for expedited-decision making during the performance of this Contract.

- H. If the Claim is not resolved by mediation, a party's decision under Paragraph 9.03.C shall become final and binding 30 days after termination of the mediation unless, within that time period, OWNER or Design/Builder:
 - 1. elects in writing to invoke any dispute process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process.
- I. If a Claim, dispute or other matter in question between OWNER and Design/Builder involves the work or obligations of a Subcontractor, Supplier or subconsultant, either OWNER or Design/Builder may join such entity as a party to the arbitration between OWNER and Design/Builder. Design/Build shall include in all subcontracts or other contracts a specific provision obligating the Subcontractor or other contracting party to consent to being joined in arbitration between OWNER and Design/Builder involving the work or obligations of such Subcontractor or other contracting party. Nothing in this paragraph SC 15.01.I nor in the provision of such subcontract or agreement consenting to joinder shall create any Claim, right or cause of action in favor of Subcontractor or other contracting party against OWNER.
- J. The obligation to comply with any Contract time limit pertaining to notice of intent to file a Claim, time limit to provide substantiating documents or any other time limit established in the Contract shall not be waived by pursuing any dispute resolution procedures, unless such waiver is expressly stated in writing by the party waiving the requirement with a specific reference to the provision or requirement being waived.

ARTICLE 16 – MISCELLANEOUS

SC 16.06 Partnering

Add a new Paragraph 16.06:

The OWNER and the DESIGN/BUILDER will promote the formation of a "Partnering" relationship in order to effectively complete the contract to the benefit of both parties. The purpose of this relationship will be to maintain cooperative communication and mutually resolve conflicts at the lowest possible management level. Notwithstanding the preceding sentences of this Paragraph 16.06, Design/Builder and any agents and employees of Design/Builder act as independent contractors to Owner and are not officers, employees, agents, partners or joint ventures of Owner in the performance of the Work, and neither party shall have the authority to enter into any agreement purporting to bind the other without the other's specific written authorization.

SC 16.07 Working Hours

Add a new Paragraph 16.07:

Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder may perform the Work at the Site only between the hours of 8AM and 8PM, Monday thru Friday, unless otherwise authorized by the Owner in writing.

SC 16.08 Permits

Add a new Paragraph 16.08:

Design/Builder and any subcontractor performing work on-site shall obtain a City of Sandpoint Business License prior to mobilization.

SC 16.09 Taxes

Add a new Paragraph 16.09:

In the event of the Design/Builder's default on the payment of taxes, excises, and license fees as set forth in Idaho Code §63-1503, the Owner shall have the authority to withhold from any payment due the Design/Builder under this contract, the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing authorities to which said Contractor is liable.

SC 16.10 Laws and Regulations

Add a new Paragraph 16.10:

While not intended to be inclusive of all Laws or Regulations for which Contractor may be responsible under paragraph 6.09, the following Laws or Regulations are included as mandated by statute or for the convenience of the Design/Builder;

1. **Idaho Code Section §63-1501. Definitions.** As used in this act, the following terms shall have the following meanings:

"Contracting units" shall include the state or any officer or department thereof, the counties or other subdivisions of the state, and all municipal and quasi-municipal corporations therein.

"Contractor" shall mean any person, firm, co-partnership, association, or corporation, foreign or domestic, entering into a contract for the construction, erection, repair, or improvement of any kind or character of public works in this state.

"Taxes" shall mean all taxes, assessments, excises, and license fees authorized to be levied, assessed, and collected under the laws of this state, other than taxes on real property.

"Taxing unit" shall mean the state or any officer or department thereof, the counties or other subdivisions of the state, and all municipal and quasi-municipal corporations therein authorized by law to assess, levy and collect taxes.

2. **Idaho Code Section §63-1502. Conditions precedent to contract for public works.** Before entering into a contract for the construction of any public works in this state, the contracting unit shall require as conditions precedent that the contractor be authorized to do business in this state and that he furnish satisfactory evidence that he has paid or secured to the satisfaction of the respective taxing units all taxes for which he or his property is liable then due or delinquent.

3. **Idaho Code Section §63-1503. Contractor for public works to pay or secure taxes—Agreement.** Every contract for the construction of public works by a contracting unit of this state shall contain substantially the following provisions:

The Contractor, in consideration of securing the business of erecting or constructing public works in this state, recognizing that the business in which he is engaged is of a transitory character, and that in the pursuit thereof, his property used therein may be without the state when taxes, excises, or license fees to which he is liable become payable, agrees:

- a. To pay promptly when due all taxes (other than on real property), excises and license fees due to the state, its subdivisions, and municipal and quasi-municipal corporations therein accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term;
 - b. That if the said taxes, excises, and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and
 - c. That in the event of his default in the payment or securing of such taxes, excises, and license fees, to consent that the department, officer, board, or taxing unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing units to which said contractor is liable.
4. **Idaho Code Section §44-1002** requires the following: The Contractor must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under any such contract except where under such contracts fifty (50) or less persons are employed, the Contractor may employ ten percent (10%) nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work, and no contract shall be let to any person, firm, association, or corporation refusing to execute an agreement with the above mentioned provisions in it; provided, that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States.

Idaho Code Chapter 19 of Title 54 requires proper licensing of Public Works Contractors.

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

SC-5.01 *Performance, Payment, and Other Bonds*

- A. Design/Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design/Builder's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Design/Builder shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Design/Builder shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Design/Builder is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Design/Builder shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Design/Builder has failed to obtain a required bond, Owner may exclude the Design/Builder from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Contractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Design/Builder from any Contractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Design/Builder shall provide a copy of the payment bond to such person or entity.

SC-5.02 *Insurance—General Provisions*

- A. Owner and Design/Builder shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design/Builder shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

1. Design/Builder may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Design/Builder shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Design/Builder has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Design/Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Contractor or Suppliers. In any documentation furnished under this provision, Design/Builder, Subcontractor, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
 1. All certificates of insurance shall name as additionally insured:
 - a. Owner: City of Sandpoint
- E. Owner shall deliver to Design/Builder, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Design/Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Design/Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design/Builder to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Design/Builder, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design/Builder, and Design/Builder cannot rely upon Owner's liability policies for any of Design/Builder's obligations to the Owner, Engineer, or third parties.

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

- H. Design/Builder shall require:
1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Design/Builder's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design/Builder has failed to obtain and maintain required insurance, Design/Builder's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design/Builder or Design/Builder's interests. Design/Builder is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Design/Builder deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Design/Builder's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

SC-5.03 Design/Builder's Insurance

- A. *Required Insurance:* Design/Builder shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Design/Builder may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Design/Builder, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Design/Builder's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Design/Builder's acts or omissions, or the acts and omissions of those working on Design/Builder's behalf, in the performance of Design/Builder's operations.
- D. *Workers' Compensation and Employer's Liability*: Design/Builder shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions). All insurance policies shall contain a Waiver of Subrogation coverage or endorsements.

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

- F. *Commercial General Liability—Claims Covered:* Design/Builder shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Design/Builder, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Design/Builder's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Design/Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Design/Builder's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Design/Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design/Builder may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
 8. All policies shall contain waiver of subrogation coverage or endorsements.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Design/Builder is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

4. Any exclusion of coverage relating to earth subsidence or movement.
5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
6. Any limitation or exclusion based on the nature of Design/Builder's work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000.00
Products—Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000.00

- J. *Automobile Liability*: Design/Builder shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000.00

- K. *Umbrella or Excess Liability*: Design/Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$2,000,000.00
General Aggregate	\$2,000,000.00

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements*: Design/Builder may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein.
- M. *Design/Builder's Pollution Liability Insurance*: Design/Builder shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Design/Builder's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

Design/Builder's Pollution Liability	Policy limits of not less than:
General Aggregate	\$1,000,000.00

- N. *Design/Builder's Professional Liability Insurance:* If Design/Builder will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Design/Builder shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Design/Builder's Professional Liability	Policy limits of not less than:
Each Claim	\$1,000,000.00
Annual Aggregate	\$2,000,000.00

SC-5.04 Builder's Risk and Other Property Insurance

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Design/Builder shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Not Used.*
- C. *Not Used.*
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design/Builder) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
1. All insurance required by the Contract Documents or by law or regulations shall remain in full force and effect on all phases of the Work, whether or not the Work is occupied or utilized by the Owner, until all Work included in the agreement has been completed and final payment has been made.
 2. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Design/Builder's responsibility for payment of damages resulting from his operations under the Contract. Design/Builder agrees that they alone shall be completed responsible for procuring and maintaining full insurance coverage as provided herein or as may be otherwise required by the Contract Documents. Any approval by Owner or Engineer shall not operate to the contrary.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

entity or individual owning such property item will be responsible for insuring it. If Design/Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Design/Builder's expense.

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
 - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Design/Builder.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of Design/Builders, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
5. extend to cover damage or loss to insured property while in transit.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.

SC-EXHIBIT 1
ARTICLE 5 – BONDS AND INSURANCE

9. be maintained in effect until the Work is complete, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Design/Builder, Subconsultants/Design/Builders (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."

SC-5.05 Professional Liability

- A. Design/Builder shall procure and maintain or furnish through any design firm subconsultant professional liability insurance for protection from claims arising out of performance of Design Professional Services under this Contract. Such professional liability insurance will provide limits in the amount of \$1,000,000 per claim and \$2,000,000 annual aggregate. Such coverage shall be maintained for a period of two years after Substantial Completion. Certificates indicating that such insurance is in effect will be delivered to Owner prior to each policy renewal date or upon request by Owner.

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

City of Sandpoint

1123 Lake St.

Sandpoint, ID 83864

CONTRACT

Effective Date of Agreement:

Amount (Figures):

Description (*Name and Location*): A23-5300-4 Travers Park All Wheeled Skatepark Design Build

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

_____(Seal)
Contractor's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest _____
Signature

Attest _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
Promptly makes payment, directly or indirectly, for all sums due Claimants, and
Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions

Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker:

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

City of Sandpoint

1123 Lake St.

Sandpoint, ID 83864

CONTRACT

Effective Date of Agreement:

Amount (Figures):

Description (*Name and Location*):

A23-5300-4 Travers Park All Wheeled Skatepark Design Build

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
 - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
 - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those

of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
 - 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
 7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
 8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
 10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
 11. Definitions.
 - 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
 - 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker:

EXHIBIT A
TRAVERS PARK ALL-WHEELED SKATEPARK EXPANSION, PHASE 1:
OWNER PROJECT REQUIREMENTS AND DRAWINGS

Exhibit A provides Owner Project Requirements including:

- Project Minimum Performance Criteria
- Project Location Overview Map of entire Travers Sports Complex with zoomed view of skatepark expansion area.
- Dreamland Original Emerick Proposal-Phase 1

Exhibit A
Owner Project Requirements and Drawings
Travers Park All-Wheeled Skatepark Expansion, Phase 1, Design-Build Contract

Budget: \$300,000

The Project site is located at 2100 Pine Street in Sandpoint, Idaho and is referred to as the Travers Park “Concrete Lake Skatepark”. The Design-Builder is responsible for determining the precise location, alignment, and layout of the expanded facility, as based on the initial concept rendering from the 2020 Parks and Recreation Master Plan, subject to final approval by the CITY.

This project is intended to seamlessly integrate into the design and construction of the new **James E. Russell Sports Center** building and gateway/trailhead/plaza, and the existing outdoor tennis courts. The existing parking lot is identified for a future renovation, however due to lack of funding, it is anticipated that the existing parking lot will be renovated in a future phase. Thus, all Phase 1 all-wheeled skatepark expansion Work should be integrated into the existing site conditions and the full build-out plan should be designed in conjunction with the intent of matching any future site improvements as information becomes available from the James E. Russell Sports Center design team. It is anticipated that the parking lot and associated landscaping, including the new plaza, will be designed under a separate contract at the same time as the skatepark expansion occurs. Communication between the two projects will be managed by the City of Sandpoint Parks Planning and Development Manager.

1.1 Minimum Performance Criteria

The following represents the City’s minimum requirements. The Project’s utilization of a design-build delivery method is intended to support innovation and therefore, a prescriptive basis of design and technical specifications have not been provided by the City. The Design-Builder is responsible for delivering an all-wheeled skatepark facility that meets the Minimum Performance Criteria. The use of the term “Optional” is intended to represent a preference and does not represent a requirement. The criteria has been articulated as the “Travers Park All-Wheel Skate Park Expansion”.

A. ALL-WHEELED, “ACTION” SKATE PARK EXPANSION

Phase I of the development includes the expansion of an existing 5,000 SF +/- concrete skate park and the complete design of the entire 18,000 SF expansion, as identified in the 2020 Parks and Recreation Master Plan. It is intended that there will be another future phased expansion to complete the full build-out of the skatepark site, as funding is realized. The available funding for Phase 1 is \$300,000. Work shall include all design, labor, materials, equipment, and related features required for completion of a fully functional phase 1 skatepark expansion.

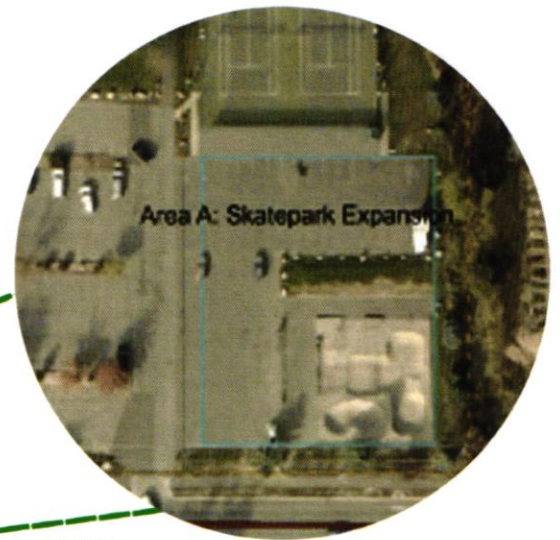
Priorities for the all-wheeled skatepark expansion include, but may not be limited to:

1. Provide public outreach to include collecting feedback from local skatepark users of all ages, abilities, and wheeled use through a minimum series of two meetings (1 public and 1 virtual).
2. Retain and seamlessly integrate with the existing concrete skate park.
3. Provide a complete design for approximately 18,000 SF for an all-wheel, “action” skate park expansion that achieves the following:
 - welcomes and serves skateboards, scooters, bicycles, roller skaters, inline skates and wheelchairs;
 - incorporates different use zones for improved safety, connectivity, extended seasonal

- use, and a wider variety of features for all-wheeled users of various ages and abilities;
 - considers opportunities for protection from seasonal environmental elements such as shade trees;
 - incorporates donor recognition, (note the Bonner County Skatepark Association is actively fundraising and the donor recognition has not yet been designed. There may be opportunities to collaborate with the Phase 1 court building design team on design, but the skater community is seeking additional funding and it is anticipated that the results of this effort will result in a future phase of expansion. As such, we would like to see creative integration of donor recognition).
 - considers use of local art that reflects Sandpoint's cultural values; and
 - incorporates feedback from the Sandpoint skatepark community.
4. Develop a construction phasing plan that maximizes the available funding.
 5. Construct the initial Phase 1 of the all-wheels skate park expansion.
 6. Seamlessly integrate with the neighborhood and existing park property.
 7. Provide efficient, skatepark-oriented outdoor lighting design in a layout plan that support safe access while respecting the City's dark-sky ordinance, and includes specifications and material call-outs.



TRAVERS PARK ALL-WHEELED SKATEPARK EXPANSION AREA



AREA: A
All-wheeled skatepark expansion area (enlarged view).
Approximately 18,000 SF full build-out area.



DREAMLAND SKATEPARKS, LLC

OUR COMMITMENT TO THE SANDPOINT COMMUNITY

Dreamland Skateparks and Mears Design Group have worked together for over twenty two years designing and building some of the world's most unique and long lasting concrete skateparks. Our relationship is a partnership in creating skateparks, which resembles our passion for creativeness in design and the highest quality of construction. Idaho has been recognized for well over the last 15 years as an iconic location for not just recreation but a destination for skateparks.

Our goal is to make sure that continues on in the future, we have already designed and built 10 public skateparks in Idaho and look forward the opportunity to build an additional all wheels park!

WE KNOW SANDPOINT

We are very familiar with the climate, area and skate community in Sandpoint and feel very confident that we can provide you a organic layout and arrangement of skate elements and features that will utilize the park to the best of it's abilities and safely accommodate the maximum amount of riders possible. By continuing to build original and integrative "Non-Cookie Cutter" skateparks in the beautiful City of Sandpoint and state of Idaho this will continue to change the way we approach all park settings and athletic progression for our future.

Every skatepark starts with the "vision", which may be started with as little as one person to multiple people. Usually, the vision is started because of the lack of skateable terrain within the local community. While there is a current skatepark already onsite (which we design/built in 2005) it lacks areas to ride for all wheels with the current advanced terrain it needs more diversity in for all park enthusiasts and keeping up with the athletic progression of our youth. This vision results from multiple factors, most importantly "safety". Most locals begin skating/riding in their driveways, local sidewalks, roads, etc., this most times results in conflicts with other users of the terrain, be it pedestrians walking the sidewalks, vehicles in the roadways or pedestrian plazas that have been encompassed by skaters because of lack of areas to skate. There is a high demand for more street elements, skate path that flows and fuses together into and around the intermediate styles of bowl that currently exists, it is becoming a much more important part of every

community from youth to adults. Although skateparks will not completely eliminate all skating in multi-purpose public areas, what the skate park will do is give riders a place that is safe, accessible and approachable. If designed with the community's needs in mind it will be as inviting to the locals and possibly worldwide skaters/riders as a place of significance and pride.

Creating a skatepark design, which provides world class skateable terrain, enhances the selected site area at the current Travers Skatepark and respects the surrounding community, which is the key focus of all our designs. The City of Sandpoint and community that surrounds the park serves as an excellent setting for the development of a truly unique distinct level all wheels inclusive park. Our experience in providing destination skateparks around the world has shown our abilities to deliver specifically what the community envisions upon hiring our abilities.

OUR DEFINITION OF A DESTINATION SKATEPARK ADDITION FOR SANDPOINT INCLUDES MULTIPLE FACTORS:

- User conflicts
- Park flow
- Integration with site conditions
- Views from adjacent properties and facilities,
- Range of obstacles/features,
- Accessibility to various skill levels, ages and genders, structural considerations,
- Graffiti management,
- Places for socializing,
- Aesthetics of surrounding landscape,
- Access to surrounding amenities (playground, park, parking lot, etc.)
- and lets not forget progressive and innovative technology of the new found skatepark elements and design.

All the factors as listed along with community and jurisdictional agency input are of significant importance to the Skateparks overall success in becoming the destination skatepark the community desires and deserves.

INTEGRATING ALL COMMUNITY MEMBERS

Most importantly, the new skatepark addition should be a welcome destination for the entire community and provide a 'sense of place' for the community. It is vital that all visitors enjoy the space and feel comfortable within their environment. With this in mind, it is important to not overlook the non-active user. They too must be well integrated into the site; to feel comfortable sitting down, watching or slowly walking by. For the

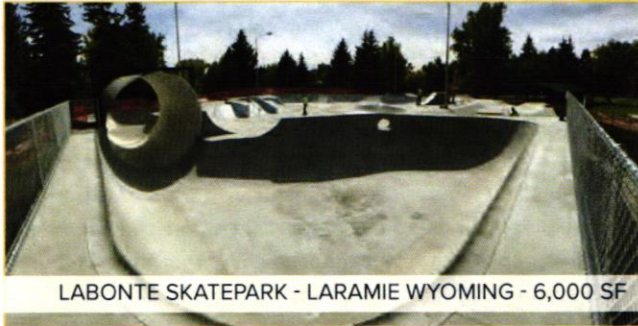


2.6.2 TEAM QUALIFICATIONS

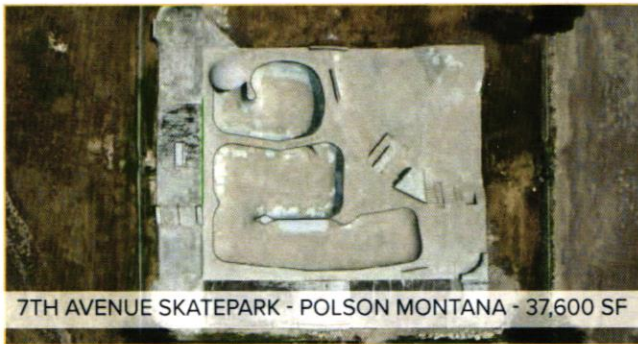
E. Major Suppliers & Subcontractors

primary users, their activity often occurs in bursts as opposed to a continuous endurance session. Much of the time users are watching, socializing and waiting for a turn. Thus, focusing on the whole of the park area and design components beyond the function of the immediate hard surface is critical.

OUR DESIGN-BUILD PROJECTS



LABONTE SKATEPARK - LARAMIE WYOMING - 6,000 SF



7TH AVENUE SKATEPARK - POLSON MONTANA - 37,600 SF



KIRTISIS SKATEPARK - LINCOLN CITY, OREGON - 22,000 SF



SHERWOOD SKATEPARK - SHERWOOD, OREGON - 13,500 SF

PROJECT UNDERSTANDING

- Dreamland Skateparks and Mears Design Group propose to provide professional design-build services of your skatepark facility located within the Travers Park.
- Our final design will appropriately consider the existing site conditions of the park with its multiple phases and its surroundings, in order to maximize the use of the area. We understand the services provided to the city will include an integrated mixture of a flawless skate path with flat that leads into the diverse and crucial street course elements the park is lacking of a mini ramp, stairs, rails and box.
- We will be integrating in some unique natural elements to Sandpoint, signature features, all while focusing on the variety of all abilities and styles of riding (all wheels park)
- Our team understands we will be responsible for the final design and construction methods and knowledge of the existing site where required as stated within the Request for Proposals.
- We understand our team is to provide the necessary final design, construction layout details, specifications and construction.
- Our team will design and build to the design criteria and exceed minimum specifications as stated with the Request for Proposal.
- Our team will provide a design-build product, which creates for entertainment experiences for all levels of users from novice to advanced, utilizing a broad range of current skateable elements.
- Our team will also coordinate our work with all project stakeholders including the Planning Departments staff, skatepark committee members, the local skate/bike community and other members of the public with an interest in the project to establish a unified successful design and build for the new skate facility.

PROJECT APPROACH

PUBLIC INPUT PROCESS

1. Our team's experience has shown that active participation by all parties involved, including the community youth during the development process is critical to the long-term success of the project. We will approach this project with a collectively efficient outreach process that engages all users and community stakeholders throughout the design process, creating a professional, organized and inviting attitude. We encourage all community youth and stakeholders to feel as though they truly were a



2.6.2 TEAM QUALIFICATIONS

E. Major Suppliers & Subcontractors

part of the design and contributed toward the results building a lasting sense of ownership in the final product.

2. Our design team has already met with local officials and the skatepark community members through a series of community meetings. We encourage an open line of communication, if members of the community are not able to make the community input meeting, they are welcome to email or private message us with all ideas. This is something we do not take lightly, our team understands the importance of the community and bringing home the results they so desire and will spare no resource to ensure the experience of the design process is as rewarding as the final product will be to ride.

Throughout our past experience we have encountered a list of challenging issues during the design process. Typically, these issues are not uncommon and deserve full attention during the design process.

THE FOLLOWING ARE A LIST OF COMMON ISSUES:

- Skateparks flow/ proper space
- Accessibility of various skill levels
- Visibility & sociability
- Cover/Shelter
- Family Atmosphere
- Cover - Gather and social areas
- Noise reduction
- Skateparks features and terrain
- Structural integrity

OUR PROPOSED SOLUTIONS:

1. Our team will and has already researched local issues and state guidelines ahead of time. We will utilize our extensive Idaho experience from previous projects to move the project along in a timely manner.
2. We will work closely with all participants making us fully aware of the constraints and opportunities this site offers. From our experiences with similar projects and most importantly Travers Park specifically, we anticipate conducting a minimum of 2 design meetings to ensure we are designing exactly what fits organically and seamlessly in the site before providing the city with a construction layout plan. This will provide for ample opportunity to gather vital information from the community stakeholders, and allow our team sufficient final feedback from our concept design presentation.

3. All of our crew is extremely familiar with the current skatepark as were the original design/builders in 2005 along with last summer we providing maintenance to the park as we rode with the park locals, a crucial aspect of understanding the current terrain, landscape, elevations change and need for updated and innovative skatepark elements. Dream Team crew member and Project Manager facilitated the renovation of the existing park, and has attended meetings in previous years for park expansion.

FINAL INPUT FOR FINAL DESIGN



Skateparks are more than just a park they are a gathering place and can be a main point of interest for other positive activities such as family gatherings, concerts, and community events. We thoughtfully design our parks to create an inviting "safe" environment for everyone. Our design "Dream Team" will present a final design to the skatepark committee and city before moving forward to the construction layout plan. Providing a detailed construction layout will help finalize the crucial and imported final details of the design elements and final budget before moving forward into construction.

DESIGNING FOR A LARGE VARIETY OF ABILITIES AND USERS:

Through our experience we have developed a wide variety of abilities and uses, including skateboarders, roller-skates, BMX and scooters. Upon designing and building skateparks we have come across many different criteria that the community users enjoy and envision being a part of their skate park. We provide many examples in addition to what has already been provided for ideas and listen to ideas/suggestions as discussed in the community input meeting. Our team will also develop a



2.6.2 TEAM QUALIFICATIONS

E. Major Suppliers & Subcontractors

list of pros and cons to all groups involved. Our team will also determine the abilities of the primary users, while allowing the park to be functional and useable for all. We are determined to develop each and every park we design as a place where all locals will enjoy, develop skills, respect and be planning their next visit before leaving.

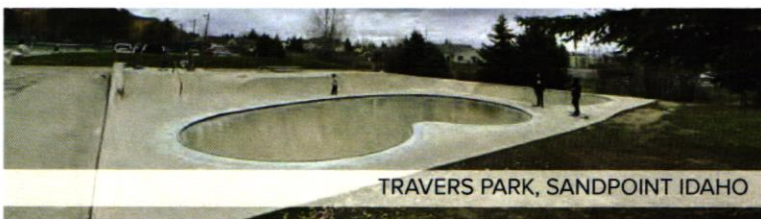
FORMING A BUDGET AND PROGRESS SPREADSHEET:

Thru the final design process we will carefully be evaluating each task, time frame, and progress reports and how funds will be allocated, disbursed upon progress payments, in-kind donations and timelines. In the design process each idea will be carefully formulated into the budget being mindful of future park amenities and park improvements. This will be done thru a bi-weekly spreadsheet and breakdown of service progress.

We will not exceed the current total estimated budget of \$300,000.00 and within this budget we will plan for additional in-kind donations. During this time we can discuss the many ways that we have built parks with donations, discounts and in-kind labor. Dreamland's whole methodology through the last 32 years of legendary park leadership, history, passion and experience in park integration is to work with communities, like minded individuals and groups through a holistic and encouraging involvement to create a place and park where everyone wants to gather be proud of and call their own. We have spent decades doing what we can to make this possible in every community.

COMMUNITY ENGAGEMENT PROCESS

One of the many key points and advantages to Dreamland is enhancing the design and pre-construction process by interacting with the skatepark community through actually skating/riding with the locals and park enthusiasts to truly understand the styles and abilities that we are adhering to. We have skated with the local skateboarders through the first phase of the skatepark renovation last summer. A holistic approach of combining physical interaction with highly involved and interactive sensitivities and representations of what is actually needed and wanted at their park.



TRAVERS PARK, SANDPOINT IDAHO

CONSTRUCTION

CONSTRUCTION TIMELINE

- Once the construction drawings are approved by the parks and recreation the construction will take 1- 1.5 weeks per 1,000 SF to complete. This depends on the complexity of the design and season.
- The safety fencing around the construction footprint of the park will adhere to the most practical and considerate impact for the public access to the park during the construction.
- Dreamland provides all services from the rough & final excavation, grading, form setting, rebar and concrete through the opening demo with our professional skateboard team.
- All materials will be sourced locally to stimulate the local economy and we are willing work with donation and/or discounted materials if applicable.
- Our unique and durable custom hand trowels are all strategically designed and built by our crewmen just like our parks.
- Construction will begin at the earliest moment of approval as the city process allows and the general contractor is prepared for us.
- The Dream Team will work diligently to utilize the warm weather and dryer conditions to complete the park as efficiently as possible.
- Dreamland is fully staffed with an extremely experienced crew whom have been design/building for decades! Our crew all live within a day drive of the park, so we have additional staff to add for an earlier completion if possible.

Dreamland has current availability in our 2022/ 2023 schedule to begin immediately May 1st 2022. We will work diligently and continuously to complete the design and construction aspect of the project on schedule to compliment the general's schedule and cities.

Our extensive experience in building in these climates and elevation gives us the perfect planning tools and experience to schedule the construction appropriately.



2.6.2 TEAM QUALIFICATIONS

F. Design-Build Experience
& Approach

THE QUALIFIED TEAM FOR TRAVERS PARK PHASE 1

EMERICK

Has been the Design-build lead on eight projects for public entities over the past seven years.

8

BWA

Over the past seven years has sixteen design-build projects for public entities over the past seven years.

16

DREAMLAND

Over the past seven years has four design-build projects for public entities over the past seven years.

4

EMERICK'S DESIGN-BUILD PROJECTS



EMERICK'S FEATURE DESIGN-BUILD PROJECT

Project Name **TVF&R Logistics Service Center**
Location **Tualatin, Oregon**
Client Name **Tualatin Valley Fire and Rescue**
Contact **Heidi Hicks (503) 649-9577, Heidi.hicks@tvfr.com**
Contract Type **Design-Build**
Square Footage **48,000 SF**
Architect **Merryman Barnes Architects, Inc.**
Architect Project Manager **Loy Rusch (503) 222-3753**
Timeframe - **6/10/2019 -11/23/2020**
Guaranteed Maximum Price (GMP) - **\$13,212,845**
Final Construction Cost Including Total C/O - **\$12,845,123**

Description - This project required land procurement and a design-build partnership with Merryman Barnes Architects. The original 39,000 SF facility was gutted and upgraded to seismic category IV. An additional 9,000 SF was added to the existing building and consisted of exterior loading docks, a truck wash facility, and pre-fabricated storage mezzanines. The existing shell of the building was cast in place tilt up concrete. New interior walls were wood framed

using laminated veneer lumber for full height walls. Multiple openings were cut in the exterior concrete walls including six openings for three drive through maintenance bays. The converted building houses multiple departments including fleet maintenance, logistics, facilities, and administrative office spaces. The fleet maintenance space can accommodate 2-3 trucks per bay has a full fluids conveyance system and a gantry crane.

Land procurement was a significant component of the project as TVF&R had very specific location requirements, our team was instrumental in helping to assess and secure the current land. Our team worked collaboratively with Merryman Barnes on value engineering options and constructability review during the design phase. Considerable effort was spent during design in order to maximize efficiency of the final facility. TVF&R hired OMEP to assist in this process during the design phase. They helped our team pull together the overall puzzle pieces of the four consolidated departments now housed under the same roof. This facility was a much-needed addition to the TVF&R family.

CLACKAMAS FIRE DISTRICT #1 - 2 PROJECTS

Chief Ryan Hari, (503) 930-1009

STATION 16 AND 19 - Station 16, located in Oregon City, and Station 19 located in Damascus, both stations were new 12,000 SF fire stations. The facilities are equipped with three engine/truck bays with eight-second opening doors, kitchen, locker rooms, day-use rooms and dorms. Our team managed these project sites in a bustling, tight neighborhood with high success. These stations were identical stations for Clackamas Fire District and

were constructed with a staggered schedule. The project team used a design-build approach for the project and for the critical elements - electrical, mechanical and plumbing systems. This required Emerick to select design / build subcontractors early in the design process so their design could be incorporated in to the overall project design. This approach allowed for early VE with the Owner and a reduced number of change orders. **We were also able to incorporate any changes from Station 16 in to the Station 19 project as it started construction 6 months later.**