

SPECIAL MEETING, 5:30 P.M.

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. REVIEW AGENDA
- V. OLD BUSINESS
 - a. Consider Design-Build Contract Willow Creek Flume with Mays Construction Specialties, Inc.
 - b. Consider General Conditions, Design-Build Contract Willow Creek Flume with Mays Construction Specialties, Inc.
- VI. ADJOURN

BUDGET WORK SESSION TO FOLLOW:
2018 GENERAL FUND

10/23/17

OPEN TO THE PUBLIC

**CITY OF CREEDE, COLORADO
DESIGN-BUILD CONTRACT
GUARANTEED MAXIMUM PRICE AGREEMENT
Independent Contractor
Fixed Price – Not to Exceed**

Project Name: **Willow Creek Flume Rehabilitation Project**

THIS AGREEMENT (“Agreement”) is entered into by and between the City of Creede, Colorado, a statutory Colorado town (“**Owner**”) and Mays Construction Specialties, Inc., a Colorado corporation, whose business address is 2399 Riverside Parkway, P.O. Box 4229, Grand Junction, CO 81502 (“**Design-Builder**”). The parties may be collectively referred to as the “**Parties**.”

RECITALS AND REPRESENTATIONS

WHEREAS, Owner desires to retain Design-Builder to complete certain construction work as described in this Agreement; and

WHEREAS, Design-Builder represents that Design-Builder has the skill, ability, and expertise to complete the construction work described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, Design-Builder acknowledges that Owner has received a limited amount of grant funding for use in completion of the work described in this Agreement and that Owner has no further funding available and will not pay more than the amount hereinafter described in this Agreement;

WHEREAS, Owner desires to engage the Design-Builder to complete the construction work described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 DESIGN-BUILDER SERVICES AND PERFORMANCE

1.1 **Work**. Design-Builder shall provide all work required by the Contract Documents (“**Work**”). Design-Builder shall retain SGM as subcontractor to provide Professional Engineering Services related to this project. Design-Builder agrees to do additional Work arising from changes ordered by the Owner pursuant to Article 7 of the General Conditions. The Work will be performed in Phases identified as follows:

Phase 1 – 90% Design/Construction Documents

Phase 2 – Final Design and Construction of Final Design

- 1.2 **Options.** Owner may exercise its option for performance of the Work under Phase 2 by providing a written Notice to Proceed to the Design Builder for performance under Phase 2. The Option for Phase 2 may be exercised not later than 30 days after the expiration of Phase 1 Time or 30 days after the acceptance by Owner of the 90% Design/Construction Documents under Phase 1, whichever is later. If Design Builder has complied with all other terms of the Contract and Owner fails to exercise its Option for Phase 2 by such calculated date, the Design-Builder agrees that a time extension will be its sole and complete remedy for any damage or loss incurred as a result of the delay in exercising said Option for Phase 2.

Owner's "OPTIONS" rights under this Article 2 are independent of the "Termination for Convenience" rights as set forth in Article 15, Section 15.4 of the General Conditions. As such, if Owner opts to not proceed with Phase 2 after the completion of Phase 1, Design Builder's right of recovery is limited to the Contract Sum for Phase 1.

Owner retains the right to terminate this Agreement for convenience at any time in accordance with Article 15 of the General Conditions.

- 1.3 **Independent Contractor.** The Design-Builder shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with Owner other than as a contracting party and independent contractor. Owner shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Design-Builder or the Design-Builder's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.
- 1.4 **Standard of Performance.** In performing the Services, the Design-Builder shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Design-Builder represents to Owner that the Design-Builder is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Design-Builder and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

2.0 CONTRACT DOCUMENTS

"Contract Documents" are defined in the General Conditions and EXHIBITS A, B and C.

3.0 COMPENSATION

- 3.1 **Commencement of and Compensation for Services.** Following execution of this Agreement by Owner the Design-Builder shall be authorized to commence performance of the Services as

described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this Section 3.0 and its subsections.

- A. **Time and Materials Contract – Not to Exceed Amount.** The Design-Builder shall perform the Services and shall invoice Owner for work performed based on the rates and/or compensation methodology described in **Exhibits A and B.**
- (i) **Phase 1.** Design-Builder shall perform the Phase 1: 90% Design/Construction Documents for a total amount not to exceed (including all reimbursable expenses) **ONE HUNDRED TWO THOUSAND SIX HUNDRED TWENTY-NINE DOLLARS AND THIRTY-FOUR CENTS (\$102,629.34)** per Exhibits A and B.
- (ii) **Phase 2.** As part of completion of Phase 1, Design-Builder shall provide in writing a Guaranteed Maximum Price for Phase 2, which shall include the sum of the estimated cost of the Work, any fees, unit material costs, the clarifications and assumptions upon which it is based, allowances and reasonable contingencies, inspections and testing by Design-Builder. The Design-Builder has included an Estimated Construction Budget subject to modification following completion of Phase 1 as described in Exhibit C as the basis of establishing the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:
- a) A list of drawings and specifications, including all addenda, which were used in the preparation of the Guaranteed Maximum Price proposal;
 - b) A list of allowances and a statement of their basis;
 - c) A list of the assumptions and clarifications made by the Design-Builder in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the drawings and specification;
 - d) The date of Final Completion and the Schedule of Work;
 - e) A schedule of applicable alternate prices; and,
 - f) A schedule of applicable unit prices.
- B. **Non-reimbursable Costs, Charges, Fees, or Other Expenses.** Any fee, cost, charge, fee, or expense incurred by the Design-Builder not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost and shall be borne by the Design-Builder and shall not be billed or invoiced to Owner and shall not be paid by Owner.
- C. **Increases in Compensation.** Any increases or modification of compensation shall be subject to the approval of the Board of Trustees of the City of Creede, Colorado, on behalf of Owner, and shall be made only by written amendment of this Agreement executed by both Parties.

- 3.2 **Payment Processing.** Payment processing is set forth in the General Conditions. Notwithstanding the foregoing, Design-Builder acknowledges and agrees that the ability of Owner to pay Design-Builder is directly dependent upon the receipt by Owner of funds from various grant funding agencies. Accordingly, Owner shall use all practicable efforts to adhere to grant funding requirements in order to promote the full and timely receipt of grant funds. Design-Builder agrees that the Owner shall not be liable for payment to Design-Builder to the extent that Owner does not receive grant funds for this project provided that the failure to receive grant funds is not a direct result of negligence of the Owner.

4.0 DESIGN-BUILDER'S GENERAL RESPONSIBILITIES

The Design-Builder's responsibilities are set forth in the General Conditions.

5.0 TERM AND TERMINATION

- 5.1 **Term.** This Agreement shall be effective on **October _____, 2017 at 12:01 a.m.**, ("Effective Date") and shall terminate at **11:59 p.m. on December 31, 2018**, or on a prior date of completion of the Services or termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to an extension (or multiple extensions) of this Agreement for up to twelve (12) consecutive calendar months if such extension is approved by the Board of Trustees and the Design-Builder and such extension does not alter or amend any of the terms or provisions of this Agreement.
- 5.2 **Time is of the Essence.** Design-Builder shall substantially complete the Services in accordance with the Contract Documents no later than December 31, 2018.
- 5.3 **Liquidated Damages.** Owner shall have the right to deduct liquidated damages of THREE HUNDRED DOLLARS (\$300.00) per calendar day for each calendar day Design-Builder fails to substantially complete the Work within the time specified in the Contract Documents.
- 5.4 **Continuing Services Required.** The Design-Builder shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Design-Builder shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of Owner, or a person expressly authorized in writing to direct the Design-Builder's services.

6.0 INSURANCE

The Design-Builder shall obtain and shall continuously maintain during the term of this Agreement insurance as required by Section 5.0 of the General Conditions.

7.0 OWNERSHIP OF DOCUMENTS

Any work product, materials, and documents produced by the Design-Builder pursuant to this Agreement shall become property of Owner upon delivery and shall not be made subject to any copyright unless

authorized by Owner. Other materials, methodology and proprietary work used or provided by the Design-Builder to Owner not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Design-Builder and the Design-Builder reserves all rights granted to it by any copyright. Owner shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by Owner staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Design-Builder waives any right to prevent its name from being used in connection with the Services.

8.0 REMEDIES

The Owner's remedies are set forth in Article 15 of the General Conditions provided that such remedies are in addition to, and shall not 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 law, equity or contract.

9.0 MISCELLANEOUS PROVISIONS

- 9.1 **No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. Owner's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by Owner except in writing signed by Owner or by a person expressly authorized to sign such waiver by resolution of the Board of Trustees, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- 9.2 **Affirmative Action.** Design-Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Design-Builder will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 9.3 **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 9.3 shall not authorize assignment.
- 9.4 **No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Design-Builder. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 9.5 **Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement

shall be in the appropriate court for Mineral County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

- 9.6 Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 9.7 Assignment and Release.** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Design-Builder without the express written consent of the Board of Trustees. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the Board of Trustees. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 9.8 Paragraph Captions.** The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 9.9 Integration and Amendment.** This Agreement represents the entire and integrated agreement between Owner and the Design-Builder and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both Owner and the Design-Builder.
- 9.10 Severability.** Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 9.11 Incorporation of Exhibits.** Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
- 9.12 Employment of or Contracts with Illegal Aliens.** Design-Builder shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Design-Builder shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Design-Builder certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Design-Builder will participate in the e-verify program or department program in order to confirm the employment eligibility of all

employees who are newly hired for employment to perform work under the public contract for services. The Design-Builder is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Design-Builder obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Design-Builder shall be required to notify the subcontractor and Owner within three (3) days that the Design-Builder has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Design-Builder shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Design-Builder's actual knowledge. The Design-Builder shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Design-Builder is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Design-Builder violates this provision, Owner may terminate this Agreement, and the Design-Builder may be liable for actual and/or consequential damages incurred by Owner, notwithstanding any limitation on such damages provided by such Agreement.

9.13 Non-Liability of Owner for Indirect or Consequential Damages or Lost Profits. Parties agree that neither Owner nor Design-Builder shall be liable for indirect or consequential damages, including lost profits that result from a declaration by one party that the other party is in default of the Agreement, provided that the party declaring the other party to be in default acts in good faith.

9.14 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, or sent via e-mail and the recipient acknowledged receipt, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to Owner:

If to the Design-Builder:

<p>City of Creede P.O. Box 457 Creede, CO 81130 Attn: Town Manager Phone: 719.658.2276 E-Mail: manager@creedetownhall.com</p>	<p>Mays Construction Specialties, Inc. P.O. Box 4229 Grand Junction, CO 81502 Attn: Kyle Vanderberg Phone: 970.245.0845 E-Mail: kvanderberg@mays-mcsi.com</p>
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With Copy to: Karen Lintott P.O. Box 457 Creede, CO 81130 Attn: Town Attorney Phone: 719.588.1479 E-Mail: kelintott@yahoo.com	
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10.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the Owner and the Design-Builder and bind their respective entities.

THIS AGREEMENT is executed and made effective as of the date provided above.

CITY OF CREEDE, COLORADO

By: _____
Jeff Larson, Mayor

Attest: _____
Randi Snead, Town Clerk

DESIGN-BUILDER:

By: _____

Printed Name: _____

Position: _____

GENERAL CONDITIONS

ARTICLE I DEFINITIONS

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

Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

Agreement: The DESIGN-BUILD CONTRACT GUARANTEED MAXIMUM PRICE AGREEMENT between OWNER and DESIGN-BUILDER covering the Work to be performed and other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

Application for Payment: The form accepted by OWNER which is to be used by DESIGN-BUILDER in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

Bid: The offer or proposal of the DESIGN-BUILDER bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bonds: Bid, performance and payment bonds and other instruments of security.

Change Order: A written order to DESIGN-BUILDER signed by OWNER authorizing an addition, deletion or revision in the Work and/or adjustment in the Contract Price of the Contract Time issued after the effective date of the Agreement.

Construction Documents: The documents consisting of Drawings and Specifications, to be prepared or assembled by the DESIGN-BUILDER, unless a deviation is specifically set forth in a Change Order executed by both the OWNER and DESIGN-BUILDER.

Contract Documents: The Agreement, the Request for Proposals, Design Builder's Proposal, General Conditions, Exhibits A, B and C, the Grant Agreement between the State of Colorado Department of Local Affairs and City of Creede (EIAF #8319) and all other documents identified in this Agreement that together form the contract between OWNER and DESIGN-BUILDER for the Work.

Contract Price: The moneys payable by OWNER to DESIGN-BUILDER under the Contract Documents as stated in the Agreement.

Contract Time: The number of days (computed as provided in Section 16.2) or the date stated in the Agreement for the completion of Work.

Contractor: The person, firm or corporation with whom OWNER has entered into the Agreement.

Day: A calendar day of twenty-four (24) hours measured from midnight to the next midnight.

Defective: An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

Design-Build Team: The DESIGN-BUILDER and key Subcontractors identified by the DESIGN-BUILDER.

Drawings: The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

Effective Date of Agreement: The date indicated in the Agreement on which it becomes effective.

Grant Agreement: The Grant Agreement between the State of Colorado Department of Local Affairs and City of Creede (EIAF #8319).

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

Modification: (a) A written amendment of the Contract Documents signed by both parties or (b) a Change Order. A Modification may only be issued after the effective date of the Agreement. Any and all Modifications must be approved by the Board of Trustees on behalf the OWNER and signed by the Mayor or Mayor's designee.

Notice of Award: The written notice by OWNER to the apparent successful Bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

Notice to Proceed: A written notice given by OWNER to DESIGN-BUILDER fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform his obligation under the Contract Documents.

Owner: The City of Creede, a Colorado statutory town, with whom DESIGN-BUILDER has entered into the Agreement and for whom the Work is to be provided.

Owner's Representative: The Town Manager or other person designated by the Town Manager.

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.

Resident Project Representative: The authorized representative of DESIGN-BUILDER who is assigned

to the site or any part thereof.

Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by DESIGN-BUILDER, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by DESIGN-BUILDER to illustrate material or equipment for some portion of the Work.

Subcontractor: An individual, firm or corporation having a direct contract with DESIGN-BUILDER or with any other subcontractor for the performance of a part of the Work at the site.

Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer as evidenced by his definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it was intended; or if there be no such certificate issued, when final payment is due in accordance with Section 14.11. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Surety: A qualified company which is providing a performance bond for completion of construction.

Work: The DESIGN-BUILDER's design and the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction all as required by the Contract Documents.

ARTICLE 2 PRELIMINARY MATTERS

- 2.1 **Delivery of Bonds.** 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 Section 5.1.
- 2.2 **Copies of Documents.** OWNER shall furnish to DESIGN-BUILDER up to ten copies (unless otherwise specified in the General Requirements) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.
- 2.3 **Commencement of Contract Time; Notice to Proceed.** The Contract time will commence to run on the Effective Date of the Agreement.
- 2.4 **Starting the Project.** DESIGN-BUILDER shall start to perform the Work on the date when the

Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

- 2.5 **Before Starting Construction.** Before undertaking each part of the Work, DESIGN-BUILDER shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. DESIGN-BUILDER shall promptly report in writing to OWNER any conflict, error or discrepancy that DESIGN-BUILDER may discover.
- 2.6 **Insurance Certificates.** Before any Work at the site is started, DESIGN-BUILDER shall deliver to OWNER certificates (and other evidence of insurance requested by OWNER) which DESIGN-BUILDER is required to purchase and maintain in accordance with Section 5.3 and 5.4; and OWNER shall deliver to DESIGN-BUILDER certificates (and other evidence of insurance requested by DESIGN-BUILDER) which OWNER is required to purchase and maintain in accordance with Section 5.0.
- 2.7 **Pre-Construction Conference.** Within, twenty (20) days after the effective date of the Agreement, but before DESIGN-BUILDER starts the Work at the site, a conference will be held to review schedules referred, to establish procedures for handling Shop Drawings and other submittals and for processing Applications for Payments, and to establish a working understanding among the parties as to the Work.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT AND REUSE

- 3.1 **Intent.** The Contract Documents comprise the entire Agreement between OWNER and DESIGN-BUILDER concerning the Work. They may be altered only by a Modification. The Contract Documents constitute the entire agreement between the parties hereto, relating to the project, and they set forth the rights, duties and obligations of each to the other as of the date of execution thereof. Any prior or subsequent agreements, promises, negotiations, or representations of any nature, not expressly set forth in the Contract Document, are of no force or effect.
- 3.2 **Interpretation.** It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of opening of Bids (or on the effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no

provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the contract Documents) shall change the duties and responsibilities of OWNER or DESIGN-BUILDER, or any of their agents or employees from those set forth in the Contract Documents.

ARTICLE 4
AVAILABILITY OF LANDS; PHYSICAL CONDITIONS;
REFERENCE POINTS

- 4.1 **Availability of Lands.** OWNER shall furnish the lands upon which the Work is to be performed, rights-of-way or access thereto, and such other lands which area designated for the use of DESIGN-BUILDER. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER. If DESIGN-BUILDER believes that any delay in OWNER'S furnishing these lands or easements entitles him to an extension of the Contract Time, DESIGN-BUILDER may make a claim therefore as provided in Article 12. DESIGN-BUILDER shall provide for all additional lands and access thereto that may be required for temporary construction facilities for storage of materials and equipment.
- 4.2 **Physical Conditions - Investigations and Reports.** Reports provided by OWNER are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.
- 4.3 **Unforeseen Physical Conditions.** DESIGN-BUILDER shall promptly notify OWNER in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. OWNER and DESIGN-BUILDER will mutually determine if further investigation or tests are necessary. If OWNER finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by DESIGN-BUILDER, a Change Order shall be issued incorporating the necessary revisions.
- 4.4 **Reference Points.** All reference points which are necessary for DESIGN-BUILDER to proceed with work are taken from existing structures and shown on the drawings.

ARTICLE 5
BONDS AND INSURANCE

- 5.1 **Performance and Other Bonds.** DESIGN-BUILDER shall furnish performance and payment Bonds, each in an amount of the Phase 1 cost estimate, and in the amount equal to the Guaranteed Maximum Price, as determined as part of Phase 1 upon acceptance by the OWNER for Phase 2, as security for the faithful performance and payment of all DESIGN-BUILDER'S obligations under the Contract Documents. These Bonds shall remain in effect at least until two

years after the date of final payment, except as otherwise provided by law. All Bonds shall be in the forms prescribed by such Sureties as (i) are licensed to conduct business in the state of Colorado, and (ii) 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 Audit Staff Bureau of Accounts, U.S. Treasury Department.

- 5.2 **Bond Certification and Substitution Requirement.** All Bonds signed by an agent must be accompanied by a certified copy of the authority to act. Each Surety hereunder shall indicate in writing its state of incorporation, and if not registered to do business in Colorado, or licensed to write bonds in Colorado, shall indicate in writing these states where it is so registered and licensed. If the Surety on any Bond furnished by DESIGN-BUILDER is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Section 5.1, DESIGN-BUILDER shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to OWNER.
- 5.3 **Design-Builder's Liability Insurance.** The DESIGN-BUILDER shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the DESIGN-BUILDER'S execution of the Work, whether such execution be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- 5.3.1 Claims under workmen's compensation, disability benefit and other similar employee benefits acts;
 - 5.3.2 Claims for damages because of bodily injury and occupational sickness or disease, or death of the DESIGN-BUILDER'S employees;
 - 5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the DESIGN-BUILDER'S employees;
 - 5.3.4 Claims for damages insured by usual 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 the DESIGN-BUILDER, or (ii) by any other person for any other reason;
 - 5.3.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and,
 - 5.3.6 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.
 - 5.3.7 **General Liability, Property Damage and Vehicle Expense.** The Insurance required by this Section shall include DESIGN-BUILDER'S General Public Liability and Property Damage Insurance, including vehicle coverage issued to the DESIGN-BUILDER and

protecting it from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by itself or by any Subcontractor, or anyone directly or indirectly employed by the DESIGN-BUILDER or by a Subcontractor under it. Comprehensive General Liability insurance shall have minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) aggregate, and of Two Million Dollars (\$2,000,000) Per Project Aggregate. The policy shall be applicable to all premises and all operations of the DESIGN-BUILDER. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name OWNER as Certificate Holder and name OWNER, and its elected officials, officers, employees and agents as additional insured parties. The comprehensive general liability insurance shall include contractual liability insurance applicable to DESIGN-BUILDER'S obligations under Section 6.18.

5.3.8 Errors and Omissions Insurances. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000) annual aggregate. Such policy of insurance shall be obtained and maintained for two (2) years following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the OWNER as a Certificate Holder.

5.3.9 Workmen's Compensation Insurance. The DESIGN-BUILDER shall take out and maintain during the life of this Contract the statutory Workmen's Compensation and Employee's Liability Insurance for all his employees to be engaged in Work on the Project under this Contract and, in case any such work is sublet, the DESIGN-BUILDER shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such Work, in accordance with the provisions of the Workmen's Compensation Act of the State of Colorado.

5.3.10 Certificates of Insurance. Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the Work.

5.4 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 5.0 and its subsections, insurance shall conform to all of the following:

5.4.1 For both DESIGN-BUILDER Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by OWNER, its officers, or its employees shall be excess and not contributory insurance to that provided by the DESIGN-BUILDER; provided, however, that OWNER shall not be obligated to obtain or maintain any insurance

whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the services. The DESIGN-BUILDER shall not be an insured party for any OWNER-obtained insurance policy or coverage.

- 5.4.2 For both DESIGN-BUILDER Insurance and Required Insurance, the DESIGN-BUILDER shall be solely responsible for any deductible losses.
- 5.4.3 For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- 5.4.4 For Required Insurance, every policy of insurance shall provide that OWNER will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.
- 5.5 **Owner's Liability Insurance.** OWNER shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.
- 5.6 **Owner Not Responsible for Insurance.** OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interest of DESIGN-BUILDER or Subcontractors in the Work. If DESIGN-BUILDER wishes property insurance coverage within the limits of such amounts, DESIGN-BUILDER may purchase and maintain it at his own expense.
- 5.7 **Special Insurance.** If DESIGN-BUILDER requests in writing that other special insurance be included in the property insurance policy, OWNER shall, if possible, include such insurance, and the cost thereof shall be charged to DESIGN-BUILDER by appropriate Change Order. Prior to commencement of the Work at the site, OWNER will in writing advise the DESIGN-BUILDER whether or not such other insurance has been procured by OWNER.
- 5.8 **Receipt and Application of Proceeds.** Any insured loss under the policies of insurance required by Section 5.5 shall be adjusted with OWNER and made payable to OWNER as trustee for the insured, as their interest may appear, subject to the requirements of any applicable mortgage clause and of Section 5.9. OWNER shall deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work 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.
- 5.9 **Owner's Rights to Settle Loss.** OWNER as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to OWNER'S exercise of this power. If such objection be made, OWNER as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, OWNER as trustee

shall upon the occurrence of an insured loss, give bond for the proper performance of his duties.

- 5.10 **Acceptance of Insurance.** If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by DESIGN-BUILDER in accordance with Sections 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER will notify DESIGN-BUILDER in writing thereof within ten (10) days of the date of delivery of such certificates to OWNER. OWNER and DESIGN-BUILDER will each provide to the other such additional information in respect of insurance provided by him as the other may reasonably request. Failure by OWNER to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.
- 5.11 **Failure to Obtain or Maintain Insurance.** The DESIGN-BUILDER's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the DESIGN-BUILDER arising from performance or non-performance of the Agreement. Failure on the part of the DESIGN-BUILDER to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which OWNER may immediately terminate the Agreement, or, at its discretion, OWNER may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by OWNER shall be repaid by DESIGN-BUILDER to OWNER immediately upon demand by OWNER, or at OWNER's sole discretion, OWNER may offset the cost of the premiums against any monies due to the DESIGN-BUILDER from OWNER pursuant to this Agreement.
- 5.12 **Insurance Certificates.** Prior to commencement of the services, the DESIGN-BUILDER shall submit to OWNER certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. OWNER may request and the DESIGN-BUILDER shall provide within three (3) business days of such request a current certified copy of any policy of insurance required by this Section 5.0 and any endorsement of such policy. OWNER may, at its election, withhold payment for services until the requested insurance policies are received and found to be in accordance with the Agreement.

ARTICLE 6 DESIGN-BUILDER'S RESPONSIBILITIES

6.1 **General Services.**

- 6.1.1 DESIGN-BUILDER's Representative shall be reasonably available to OWNER and shall have the necessary expertise and experience required to supervise the Work. DESIGN-BUILDER's Representative shall communicate regularly with OWNER and shall be vested with the authority to act on behalf of DESIGN-BUILDER. DESIGN-BUILDER's Representative may be replaced only with the mutual agreement of OWNER and DESIGN-BUILDER.
- 6.1.2 DESIGN-BUILDER shall provide OWNER with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Agreement; and (v) other items that require resolution so as not to jeopardize DESIGN-BUILDER's ability to complete the Work for the Contract Price and within the Contract Time(s).
- 6.1.3 DESIGN-BUILDER
- 6.2 **Design Professional Services.** DESIGN-BUILDER shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by DESIGN-BUILDER, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit DESIGN-BUILDER to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between OWNER and any Design Consultant.
- 6.3 **Design Development Services.**
- 6.3.1 DESIGN-BUILDER and OWNER shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that OWNER may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, DESIGN-BUILDER and OWNER shall meet and confer about the submissions, with DESIGN-BUILDER identifying during such meetings, among other things, the evolution of the design and any changes to the designs, or, if applicable, previously submitted design submissions. Minutes of the meetings, including a full listing of all changes, will be maintained by DESIGN-BUILDER and provided to all attendees for review. Following the design review meeting, OWNER shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in DESIGN-BUILDER's schedule.
- 6.3.2 DESIGN-BUILDER shall submit to OWNER Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The

Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and OWNER shall review and approve, the Construction Documents. DESIGN-BUILDER shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to OWNER prior to commencement of construction.

6.3.3 OWNER's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither OWNER's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from DESIGN-BUILDER to OWNER.

6.3.4 To the extent not prohibited by the Contract Documents, DESIGN-BUILDER may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

6.4 Government Approvals and Permits.

6.4.1 DESIGN-BUILDER shall provide reasonable assistance to OWNER in obtaining those permits, approvals and licenses that are OWNER's responsibility.

6.5 Design-Builder's Construction Phase Services.

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

6.5.2 DESIGN-BUILDER shall supervise, direct and perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. DESIGN-BUILDER shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction. 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 finished Work complies accurately with the Contract Documents.

6.5.3 DESIGN-BUILDER shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER

except under extraordinary circumstances. The superintendent will be DESIGN-BUILDER'S representative at the site and shall have authority to act on behalf of DESIGN-BUILDER. All communications given to the superintendent shall be as binding as if given to DESIGN-BUILDER.

- 6.5.4 DESIGN-BUILDER shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. OWNER may reasonably object to DESIGN-BUILDER's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that OWNER's decision impacts DESIGN-BUILDER's cost and/or time of performance.
- 6.5.5 DESIGN-BUILDER assumes responsibility to OWNER for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between OWNER and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 6.5.6 DESIGN-BUILDER shall coordinate the activities of all Subcontractors. If OWNER performs other work on the Project or at the Site with separate contractors under OWNER's control, DESIGN-BUILDER agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 6.5.7 DESIGN-BUILDER shall keep the Site reasonably free from debris, trash and construction wastes to permit DESIGN-BUILDER to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, DESIGN-BUILDER shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit OWNER to occupy the Project or a portion of the Project for its intended use.
- 6.5.8 DESIGN-BUILDER shall adhere and comply with all conditions required of permits from the Colorado Department of Transportation, the U.S. Army Corps of Engineers, and any other state and federal permitting agencies.
- 6.5.9 DESIGN-BUILDER shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. DESIGN-BUILDER shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, all Work at the site shall be performed during regular working hours, and DESIGN-BUILDER will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent.

- 6.5.10 DESIGN-BUILDER shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operations and completion of Work.
- 6.5.11 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by OWNER, DESIGN-BUILDER shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment.
- 6.5.12 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.
- 6.5.13 **Equivalent Materials and Equipment.** Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers fabricators, suppliers or distributors may be accepted by OWNER if sufficient information is submitted by DESIGN-BUILDER to allow OWNER to determine that the material or equipment proposed is equivalent to that named. The procedure for review by OWNER will be as set forth in Sections 6.5.13.1 and 6.5.13.2.
- 6.5.13.1 Requests for review of substitute items of material and equipment will not be accepted by OWNER from anyone other than DESIGN-BUILDER. If DESIGN-BUILDER wishes to furnish or use a substitute item of material or equipment, DESIGN-BUILDER shall make written application to OWNER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use as and capable of performing the same function as specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the Contract Documents to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by OWNER in evaluating the proposed substitute. OWNER may require DESIGN-BUILDER to furnish at DESIGN-BUILDER'S expense additional data about the proposed

substitute. OWNER will be the sole judge of acceptability and no substitute will be ordered or installed without OWNER'S prior written acceptance. OWNER may require DESIGN-BUILDER to furnish at DESIGN-BUILDER'S expense a special performance guarantee or other surety with respect to any substitute.

- 6.5.13.2 OWNER will record time required by OWNER and OWNER'S consultants in evaluating substitutions proposed by DESIGN-BUILDER and in making changes in the Contract Documents occasioned thereby. Whether or not OWNER accepts a proposed substitute, DESIGN-BUILDER shall reimburse OWNER for the charges of OWNER and OWNER'S consultants for re-evaluating any proposed substitute.

6.6 Design-Builder's Responsibility for Project Safety.

- 6.6.1 DESIGN-BUILDER recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. DESIGN-BUILDER assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. DESIGN-BUILDER shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, DESIGN-BUILDER's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with DESIGN-BUILDER's personnel, Subcontractors and others as applicable.
- 6.6.2 DESIGN-BUILDER and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any OWNER-specific safety requirements set forth in the Contract Documents, provided that such OWNER-specific requirements do not violate any applicable Legal Requirement. DESIGN-BUILDER will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to OWNER's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 6.6.3 DESIGN-BUILDER's responsibility for safety under this Section 6.6 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses,

damages or accidents resulting from their performance of the Work.

- 6.7 **Design-Builder's Warranty.** DESIGN-BUILDER warrants to OWNER that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. DESIGN-BUILDER's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides OWNER with greater warranty rights than set forth in this Section 6.7 or the Contract Documents. DESIGN-BUILDER will provide OWNER with all manufacturers' warranties upon Substantial Completion.
- 6.8 **Correction of Defective Work.** DESIGN-BUILDER agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 6.7 hereof, within a period of two (2) years from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents. DESIGN-BUILDER shall, within fifteen (15) days of receipt of written notice from OWNER that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If DESIGN-BUILDER fails to commence the necessary steps within such fifteen (15) day period, OWNER, in addition to any other remedies provided under the Contract Documents, may provide DESIGN-BUILDER with written notice that OWNER will commence correction of such nonconforming Work with its own forces. If OWNER does perform such corrective Work, DESIGN-BUILDER shall be responsible for all reasonable costs incurred by OWNER in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the fifteen (15) day period identified herein shall be deemed inapplicable. The two (2) year period referenced herein applies only to DESIGN-BUILDER's obligation to correct nonconforming Work that is installed and constructed as part of the Phase 2 work and is not intended to constitute a period of limitations for any other rights or remedies OWNER may have regarding DESIGN-BUILDER's other obligations under the Contract Documents.
- 6.9 **Subcontractors.** DESIGN-BUILDER shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment) whether initially or as a substitute, against whom OWNER may have reasonable objection. A Subcontractor or other person or organization identified in writing to OWNER by DESIGN-BUILDER prior to the Notice of Award and not objected to in writing by OWNER prior to the Notice of Award will be deemed acceptable to OWNER. Acceptance of any Subcontractor, other person or organization by OWNER shall not constitute a waiver of any right of OWNER to reject defective Work. If OWNER after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by DESIGN-BUILDER after the Notice of Award, DESIGN-BUILDER shall submit an acceptable substitute and the Contract Price shall be increased or

decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. DESIGN-BUILDER shall not be required to employ any Subcontractor, other person or organization against whom DESIGN-BUILDER has reasonable objection.

- 6.10 **Responsibility for Subcontractors.** DESIGN-BUILDER shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that DESIGN-BUILDER is responsible for the acts and omissions of persons directly employed by DESIGN-BUILDER. Nothing in the Contract Documents shall create any contractual relationship between OWNER and any Subcontractor or other person or organization having a direct contract with DESIGN-BUILDER, nor shall it create any obligation on the part of OWNER to pay or to see to the payment of any moneys due any Subcontractor or other person or organization except as may otherwise be required by law. OWNER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to DESIGN-BUILDER on account of specific Work done. The identifications of any Drawings shall not control DESIGN-BUILDER in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- 6.11 **Required Terms in Subcontractor Agreements.** All Work performed for DESIGN-BUILDER by a Subcontractor will be pursuant to an appropriate agreement between DESIGN-BUILDER and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER. DESIGN-BUILDER shall pay each Subcontractor a just share of any insurance moneys received by DESIGN-BUILDER on account of losses under policies issued pursuant to Article 5.
- 6.12 **Patent Fees and Royalties.** 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 Contract Documents for use in the performance of the Work 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 Contract Documents. DESIGN-BUILDER shall indemnify and hold harmless OWNER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of 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 not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.
- 6.13 **Taxes.** DESIGN-BUILDER shall pay all sales, consumer, use and other similar taxes required to be paid by it in accordance with the law of the place of the Project. All bids shall include all such taxes with no adjustment for any refund the OWNER will receive. The DESIGN-BUILDER shall maintain and furnish to the OWNER, records, as required by governmental regulations of sales

taxes paid to enable recovery of the same by the OWNER.

- 6.14 **Use of Premises.** DESIGN-BUILDER shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 6.15 **Loading and Adjacent Properties.** 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 Work or adjacent property to stresses or pressures that will endanger it.
- 6.16 **Record Documents.** DESIGN-BUILDER shall keep one record copy of all Contract Documents, Addenda, Modifications, Shop Drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to OWNER for examination and shall be delivered to OWNER upon completion of the Work.
- 6.17 **Emergencies.** In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, DESIGN-BUILDER, without special instructing or authorization from OWNER, is obligated to act to prevent threatened damage, injury or loss. DESIGN-BUILDER shall give OWNER prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.
- 6.18 **Indemnification.** To the fullest extent permitted by law, DESIGN-BUILDER shall indemnify and hold harmless OWNER and their agents and employees from and against all claims, damages, losses and expenses including but not limited to attorney's fees arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense (a) 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, and (b) is caused in whole or in part by a negligent act or omission of DESIGN-BUILDER, any Subcontractor, anyone directly or indirectly employed by and of them or anyone for whose acts any of them may be liable. In any and all claims against OWNER or any of their agents or employees by any employee of DESIGN-BUILDER, and Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 6.18 shall not be limited in any way to any limitation on the amount or type of damages, compensation or benefits payable by or for DESIGN-BUILDER or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 7

WORK BY OTHERS

- 7.1 OWNER may perform additional work related to the Project himself, or have additional work

performed by utility service companies, or let other direct contracts therefore which shall contain General Conditions similar to these. DESIGN-BUILDER shall afford the utility service companies and the other contractors who are parties to such direct contracts (or OWNER, if OWNER is performing the additional work with OWNER'S employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his Work with theirs.

- 7.2 If any part of DESIGN-BUILDER'S Work depends for proper execution or results upon the work of any such other contractor or utility service company (or OWNER), DESIGN-BUILDER shall inspect and promptly report to OWNER in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. DESIGN-BUILDER'S failure to report shall constitute an acceptance of the other work as fit and proper for integration with DESIGN-BUILDER'S Work except for latent or non-apparent defects and deficiencies in the other work.
- 7.3 DESIGN-BUILDER shall do all cutting, fitting and patching of his 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 their work and will only cut or alter their work with the written consent of OWNER and the others whose work will be affected.
- 7.4 If the performance of additional work by other contractors or utility service companies or OWNER was not noted in the Contract Documents, written notice thereof shall be given to DESIGN-BUILDER prior to starting any such additional work. If DESIGN-BUILDER believes that the performance of such additional work by OWNER or others involves additional expense to DESIGN-BUILDER or requires an extension of the Contract Time, DESIGN-BUILDER may make a claim therefor as provided in Articles 11 and 12.

ARTICLE 8

OWNER'S RESPONSIBILITIES

- 8.1 OWNER shall issue all communications to DESIGN-BUILDER through OWNER'S Representative.
- 8.2 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to DESIGN-BUILDER promptly after they are due as provided in Article 14.
- 8.3 OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Sections 4.1.and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to DESIGN-BUILDER copies of reports of investigation and tests of subsurface and latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by OWNER in preparing the Contract

Documents.

- 8.4 In connection with OWNER'S rights to request changes in Work in accordance with Article 10, OWNER (especially in certain instances as provided in Section 10.4) is obligated to execute Change Orders.
- 8.5 OWNER'S responsibility in respect of certain inspections, tests and approvals is set forth in Section 13.4
- 8.6 In connection with OWNER'S right to stop Work or suspend Work, see Sections 13.10 and 15.1. Paragraph 15.2 deals with OWNER'S right to terminate services of DESIGN-BUILDER under certain circumstances.
- 8.7 OWNER shall have the responsibility to obtain necessary permits from the Colorado Department of Transportation and the U.S. Army Corps of Engineers. OWNER shall have the responsibility to negotiate, prepare and obtain necessary easements to allow construction on, or construction access to, private property as identified on design documents.

ARTICLE 9
[reserved]

ARTICLE 10
CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by Change Orders. Upon receipt of a Change Order, DESIGN-BUILDER shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12 on the basis of a claim made by either party.
- 10.2 OWNER may authorize minor changes in the Work not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. This may be accomplished by a Field Order and shall be binding on OWNER, and also on DESIGN-BUILDER who shall perform the change promptly. If DESIGN-BUILDER believes that a field order justifies an increase in the Contract Price or Contract Time, DESIGN-BUILDER may make a claim therefor as provided in Article 11 or Article 12.
- 10.3 Additional Work performed without authorization of a Change Order will not entitle DESIGN-

BUILDER to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Section 6.22 and except as provided in Sections 10.2 and 13.9.

- 10.4 OWNER shall execute appropriate Change Orders covering changes in the Work which are required by OWNER, or required because of unforeseen physical conditions or emergencies, or because of uncovering Work found not to be defective, or as provided in Sections 11.9 or 11.10, or because of any other claim of DESIGN-BUILDER for a change in the Contract Time or the Contract Price.
- 10.5 If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be DESIGN-BUILDER'S responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. DESIGN-BUILDER shall furnish proof of such adjustment to OWNER.

ARTICLE 11 CHANGE OF CONTRACT PRICE

- 11.1 **Change Order.** A Change Order is a written instrument issued after execution of the Agreement signed by OWNER and DESIGN-BUILDER, stating their agreement upon all of the following: (1) The scope of the change in the Work; (2) The amount of the adjustment to the Contract Price; and (3) The extent of the adjustment to the Contract Time(s). All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. OWNER and DESIGN-BUILDER shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. If OWNER requests a proposal for a change in the Work from DESIGN-BUILDER and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse DESIGN-BUILDER for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.
- 11.2 **Contract Price and Change in Contract Price.** The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to DESIGN-BUILDER for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by DESIGN-BUILDER shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless OWNER allows an additional period of time to ascertain accurate cost data. All claims for adjustment in the Contract Price shall be mutually agreed by OWNER and DESIGN-BUILDER. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

- 11.3 Work Value.** The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
- 11.3.1.** Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of Section 11.9).
 - 11.3.2.** By mutual acceptance of a lump sum.
 - 11.3.3.** On the basis of the cost of the Work (determined as provided in Sections 11.4 and 11.5) plus a Contractor's Fee for overhead and profit (determined as provided in Section 11.6).
- 11.4 Cost of the Work.** 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. 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, shall include only the following items and shall not include any of the costs itemized in Section 11.5:
- 11.4.1.** 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. 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' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.
 - 11.4.2.** Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and the storage thereof, and manufacturers' 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 all returns from sale of surplus materials and equipment shall accrue to OWNER, and DESIGN-BUILDER shall make provisions so that they may be obtained.
 - 11.4.3.** Payments made by DESIGN-BUILDER to the Subcontractor for Work performed by Subcontractors. If a 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 shall be determined in the same manner as DESIGN-BUILDER'S cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as

applicable.

11.4.4. Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental Costs including the following:

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

11.4.5.2. Costs, 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 workmen, 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 the DESIGN-BUILDER.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from DESIGN-BUILDER or others in accordance with rental agreements approved by OWNER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with 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.

11.4.5.4. Sales, use or similar taxes related to the Work, and for which DESIGN-BUILDER is liable, imposed by any governmental authority.

11.4.5.5. Deposits lost for causes other than DESIGN-BUILDER'S negligence, royalty payments and fees for permits licenses.

11.4.5.6. Losses and damages (and related expenses), not compensated by insurance or otherwise to the Work or otherwise sustained by DESIGN-BUILDER in connection with the execution 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. If, however, any such loss or damage requires reconstruction and DESIGN-BUILDER is placed in charge thereof, DESIGN-BUILDER shall be paid for services a fee proportionate to that stated in Section 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses, such as facsimiles, cellular phones, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5 **Cost of Work Exclusions.** The term Cost of the Work shall not include any of the following:

11.5.1. Any DESIGN-BUILDER's Fee.

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

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

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not DESIGN-BUILDER is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).

11.5.5. 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

11.5.6. including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.4.

11.6 **Credit.** The amount of credit to be allowed by DESIGN-BUILDER to OWNER for any such change which results in a net decrease in cost, will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

11.7 **Adjustment of Unit Prices.** Whenever the cost of any Work is to be determined pursuant to Sections 11.4 and 11.5, DESIGN-BUILDER will submit in form acceptable to OWNER an itemized cost breakdown together with supporting data.

ARTICLE 12 CHANGE OF THE CONTRACT TIME

- 12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER within fifteen (15) days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless OWNER allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be mutually determined by OWNER and DESIGN-BUILDER. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
- 12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the DESIGN-BUILDER if a claim is made therefor as provided in Section 12.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional Work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.
- 12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

ARTICLE 13
WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

- 13.1 **Warranty and Guarantee.** DESIGN-BUILDER warrants and guarantees to OWNER that all Work installed and constructed as part of Phase 2 will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to DESIGN-BUILDER. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.
- 13.2 **Access to the Work.** OWNER, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. DESIGN-BUILDER shall provide proper and safe conditions for such access.
- 13.3 **Tests and Inspections.** DESIGN-BUILDER shall give OWNER timely and reasonable notice of readiness of the Work for all required inspections, tests or approvals.
- 13.4 **Required Tests and Inspections.** If any law, ordinance, rule, regulation, code or other of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested or approved, DESIGN-BUILDER shall assume full responsibility therefor, pay all costs in connection therewith and furnish OWNER the required certificates of inspection, testing or approval. DESIGN-BUILDER shall also be responsible for and shall pay all costs in connection

with any inspection or testing required in connection with OWNER'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment submitted for approval prior to DESIGN-BUILDER'S purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by OWNER (unless otherwise specified).

- 13.5 **Approval of Inspecting and Testing Organizations.** All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and DESIGN-BUILDER.
- 13.6 **Inspecting or Testing Covered Work.** If any Work that is to be inspected, tested or approved is covered without written concurrence of OWNER, it must, if requested by OWNER, be uncovered for observation. Such uncovering shall be at DESIGN-BUILDER'S expense unless DESIGN-BUILDER has given OWNER timely notice of DESIGN-BUILDER'S intention to cover such Work and OWNER has not acted with reasonable promptness in response to such notice.
- 13.7 **No Waiver to Perform Work.** Neither observations by OWNER nor inspections, tests or approvals by others shall relieve DESIGN-BUILDER from his obligations to perform the Work in accordance with the Contract Documents.
- 13.8 **Uncovering Work Covered Contrary to Owner's Request.** If any Work is covered contrary to the written request of OWNER, it must, if requested by OWNER, be uncovered for OWNER'S observation and replaced at DESIGN-BUILDER'S expense.
- 13.9 **Uncovering Work Covered with Owner's Consent.** If OWNER considers it necessary or advisable that covered Work 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 Work in question, furnishing all necessary labor. If it is found that such Work is defective, DESIGN-BUILDER shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation of additional professional service, and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, DESIGN-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefor as provided in Articles 11 and 12.
- 13.10 **Owner May Stop the Work.** If the Work installed or constructed under Phase 2 is defective, or DESIGN-BUILDER fails to supply sufficient skilled workman or suitable materials or equipment, OWNER may order DESIGN-BUILDER to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall 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.

- 13.11 **Correction or Removal of Defective Work.** If required by OWNER, DESIGN-BUILDER shall promptly, without cost to OWNER, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by OWNER, remove it from the site and replace it with non-defective Work.
- 13.12 **Two Year Correction Period.** If within two (2) years after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work installed or constructed as part of Phase 2 is found to be defective, DESIGN-BUILDER shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. 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 Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation of additional professional service, shall be paid by DESIGN-BUILDER.
- 13.13 **Acceptance of Defective Work.** If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. In such case, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by DESIGN-BUILDER to OWNER.
- 13.14 **OWNER May Correct Defective Work.** If DESIGN-BUILDER fails within a reasonable time after written notice of OWNER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by OWNER in accordance with Section 13.11, or if DESIGN-BUILDER fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), OWNER may, after fifteen (15) days' written notice to DESIGN-BUILDER correct and remedy any such deficiency. In exercising his rights under this Section, OWNER shall proceed expeditiously, to the extent necessary to complete corrective and remedial Action. OWNER may exclude DESIGN-BUILDER from all or part of the site, take possession of all or part of the Work, and suspend DESIGN-BUILDER'S services related thereto, take possession of DESIGN-BUILDER'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work 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 representatives, agents and employees such access to the site and 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. DESIGN-BUILDER shall allow OWNER, OWNER'S representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise his rights under this Section. All direct and indirect costs of OWNER in exercising such rights shall be charged against DESIGN-BUILDER in an amount verified by OWNER, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall

include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of DESIGN-BUILDER'S defective Work. DESIGN-BUILDER shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights hereunder.

ARTICLE 14 PAYMENTS TO DESIGN-BUILDER AND COMPLETION

- 14.1 **Schedules.** At least five (5) business days prior to submitting the first Application for progress payment, DESIGN-BUILDER shall submit to OWNER a progress schedule, a final schedule or Shop Drawings submission and where applicable a schedule of values of the Work. These schedules shall be satisfactory in form and substance to OWNER. The schedule of values shall include quantities and unit prices aggregating the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by OWNER, it shall be incorporated into a form of Application for Payment acceptable to OWNER.
- 14.2 **Application for Progress Payment.** At least five (5) business days before each progress payment falls due (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 of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as OWNER may reasonably require. 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 such data, satisfactory to OWNER, as will establish OWNER'S title to the material and equipment and protect OWNER'S interest therein, including applicable insurance. Each subsequent Application for Payment shall include an affidavit of DESIGN-BUILDER stating that all previous progress payments received on account of the Work have been applied to discharge in full all the DESIGN-BUILDER'S obligations reflected in prior Applications for Payment.
- 14.3 **Payment Retention.** The OWNER shall retain five percent (5%) of the amount of each payment for the first fifty percent (50%) of Work completed and shall not retain any percent amount of payment due thereafter.
- 14.4 **DESIGN-BUILDER Representations.** The Application for Payment shall constitute DESIGN-BUILDER'S representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to OWNER free and clear of all claims, liens, encumbrances, and

security interests upon the incorporation of the Work into the Project, or upon DESIGN-BUILDER's receipt of payment, whichever occurs earlier.

- 14.5 **Review of Applications for Progress Payment.** OWNER will, within fifteen (15) days after receipt of each Application for Payment, either indicate acceptance of payment or return the application to DESIGN-BUILDER indicating in writing OWNER'S reasons for refusing to recommend payment. In the latter case, DESIGN-BUILDER may make the necessary corrections and resubmit the application. OWNER shall, within thirty (30) days of presentation to it of the Application for Payment pay DESIGN-BUILDER the amount recommended.
- 14.6 **Withholding of Payments.** On or before the date established in the Agreement, OWNER shall pay DESIGN-BUILDER all amounts properly due. If OWNER determines that DESIGN-BUILDER is not entitled to all or part of an Application for Payment as a result of DESIGN-BUILDER's failure to meet its obligations hereunder, it will notify DESIGN-BUILDER in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts OWNER intends to withhold, the reasons and contractual basis for the withholding, and the specific measures DESIGN-BUILDER must take to rectify OWNER's concerns. DESIGN-BUILDER and OWNER will attempt to resolve OWNER's concerns prior to the date payment is due. If the parties cannot resolve such concerns, DESIGN-BUILDER may pursue its rights under the Contract Documents, including those under Article 10 hereof. Notwithstanding anything to the contrary in the Contract Documents, OWNER shall pay DESIGN-BUILDER all undisputed amounts in an Application for Payment within the times required by the Agreement, subject to Section 3.2 of the Agreement.
- 14.7 **Payment of Sub-Contractors.** DESIGN-BUILDER agrees to pay all sub-contractors within seven (7) days of receipt of payment.
- 14.8 **Substantial Completion.** When DESIGN-BUILDER considers the entire Work ready for its intended use, DESIGN-BUILDER shall, in writing to OWNER, certify that the entire Work is substantially complete and request that OWNER issue a certificate of Substantial Completion. Within five (5) business days 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 his reasons therefor. If OWNER considers the Work substantially complete, OWNER will prepare and deliver 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 recommendation as to division of responsibilities pending final payment between OWNER and DESIGN-BUILDER with respect to security, operation, safety, maintenance, heat, utilities and insurance.
- 14.9 **Right to Exclude Design-Builder.** OWNER shall have the right to exclude DESIGN-BUILDER from the Work after the date of Substantial Completion, but OWNER shall allow DESIGN-BUILDER reasonable access to complete or correct items on the list.

- 14.10 **Final Inspection.** Upon written notice from DESIGN-BUILDER that the Work 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 remedy such deficiencies.
- 14.11 **Final Application for Payment.** After DESIGN-BUILDER has completed all such corrections to the satisfaction of OWNER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents and after OWNER has indicated that the work is acceptable, DESIGN-BUILDER may make application for final payment following the procedures for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as OWNER may reasonably require, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, DESIGN-BUILDER may furnish receipts or releases in full; an affidavit of DESIGN-BUILDER that releases and receipts include all labor, services, material and equipment of which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, DESIGN-BUILDER may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.
- 14.12 **Final Payment and Acceptance.** If, on the basis of OWNERS'S observations of the Work during construction and final inspection, and OWNER'S review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, OWNER is satisfied that the Work has been completed and DESIGN-BUILDER has fulfilled all of his obligations under the Contract Documents, OWNER will, within ten (10) days after receipt of the final Application for Payment, indicate in writing its approval of final payment. Otherwise, OWNER will return the Application to DESIGN-BUILDER, indicating in writing the reasons for refusing to recommend final payment, in which case DESIGN-BUILDER shall make the necessary corrections and resubmit the Application. If the application and accompanying documentation are appropriate as to form and substance, OWNER shall, within fifteen (15) days after publication of the completion notice for the project, pay DESIGN-BUILDER the amount approved by OWNER, if there are no outstanding claims at that time.
- 14.13 **DESIGN-BUILDER'S Continuing Obligation.** DESIGN-BUILDER'S obligation to perform and complete the Work in accordance with the Contract Documents may be absolute. Neither the issuance of a certificate of Substantial Completion, nor any payment by OWNER to DESIGN-BUILDER under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any correction of defective Work by OWNER shall constitute an acceptance of Work 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.

- 14.14 **Waiver of Claims.** The making and acceptance of final payment shall constitute a waiver of all claims by DESIGN-BUILDER against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15

SUSPENSION OF WORK AND TERMINATION

- 15.1 **OWNER May Suspend Work.** OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to DESIGN-BUILDER which shall fix the date on which Work shall resume. DESIGN-BUILDER will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefor provided in Articles 11 and 12.
- 15.2 **Owner May Terminate.** Upon the occurrence of any one or more of the following events:
- 15.2.1. if DESIGN-BUILDER is adjudged in bankrupt or becomes insolvent;
 - 15.2.2. if DESIGN-BUILDER makes a general assignment for the benefit of creditors;
 - 15.2.3. if a trustee or receiver is appointed for DESIGN-BUILDER or for any of DESIGN-BUILDER'S property;
 - 15.2.4. if DESIGN-BUILDER files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
 - 15.2.5. if DESIGN-BUILDER repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
 - 15.2.6. if DESIGN-BUILDER repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment; or,
 - 15.2.7. if DESIGN-BUILDER disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction.
- 15.3 **OWNER'S Rights Not Waived.** Where DESIGN-BUILDER'S services have been so terminated by OWNER, the termination shall not affect any right 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.

- 15.4 **Right To Terminate.** Upon seven (7) days' written notice to DESIGN-BUILDER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, DESIGN-BUILDER shall be paid for all Work executed and any expense sustained plus reasonable termination expenses.
- 15.5 **DESIGN-BUILDER May Stop Work or Terminate.** If, through no act or fault of DESIGN-BUILDER, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or OWNER fails to act on any Application of Payment within thirty (30) days to pay DESIGN-BUILDER any sum finally determined to be due, the DESIGN-BUILDER may, upon seven (7) days written notice to OWNER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if OWNER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, DESIGN-BUILDER may upon seven (7) days notice to OWNER stop the Work until Payment of all amounts then due. The provisions of this Section shall not relieve DESIGN-BUILDER of his obligations under Section 6.5 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

ARTICLE 16 **MISCELLANEOUS**

- 16.1 **Notice.** The provisions for Notice are set forth in Section 9.14 of the Agreement.
- 16.2 **Computation of Time.** When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.
- 16.3 **General.** Should OWNER or DESIGN-BUILDER suffer injury damage to his person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.
- 16.4 **No Limitation on Rights and Remedies.** The duties and obligations imposed by these General Conditions the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed under DESIGN-BUILDER by Sections 6.18, 13.1, 13.11, 13.12, 14.4 and 15.3 and all of the rights and remedies available to OWNER thereunder, shall be in addition to, and shall not 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 law, equity or contract, by special warranty or guarantee or by other provisions of the

Contract Documents, and the provisions of this Section shall 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.

- 16.5 **Survival of Representations, Warranties and Guarantees.** All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Agreement.
- 16.6 **Agreement Terms Applicable to General Conditions.** All terms in the Agreement shall be deemed to be applicable to the General Conditions and where there is a conflict, the terms of the Agreement shall supersede and control any conflicting term in the General Conditions.