

CITY OF FRESNO
AIRPORTS DEPARTMENT
Request for Qualification Statements
PROGRESSIVE DESIGN-BUILD
PROCUREMENT FOR
PARKING STRUCTURE at



FRESNO YOSEMITE
INTERNATIONAL AIRPORT

Request for Qualifications Statements
(RFQS)

July 10, 2019

Submittal Deadline: 4:00 p.m., August 7, 2019

Section 1. Background

1.1 Introduction

The **City of Fresno Airports Department** (OWNER) invites interested Design-Build Entities (PROPOSER) to submit Statements of Qualifications (SOQ) for the **Fresno Yosemite International Airport (FAT) Parking Structure – 2019** Project (PROJECT) according to the requirements set forth in this Request for Qualification Statements (RFQS), including the format and content guidelines in Section 5. The SOQs will be reviewed and evaluated using a qualifications-based selection process described in Section 6. The capitalized terms in this RFQS have the meanings as first used in the text of this RFQS and as defined in Attachment A (Definition of Terms).

No federal funding will be used on this Project.

Proposer shall provide the Owner with acknowledgment of this RFQS, within **five (5)** days of receipt.

This RFQS establishes the process for soliciting and evaluating SOQs from Proposers interested in serving as the Design-Builder. The Project will be designed and constructed in two phases using the progressive design-build delivery method:

- Preconstruction Phase (Phase One): Prepare design to approximately 80 percent complete, as defined in Attachment B (Scope of Design-Builder Services), and establish a Guaranteed Maximum Price (GMP) proposal
- Construction Phase (Phase Two): Complete design, construction and post-construction tasks, including performance testing, startup commissioning and operator training and support (if GMP or lump-sum price is approved by the Owner in the preconstruction phase)

At completion of the evaluation process, Owner will select a Proposer to enter into negotiations for execution of a Phase One Agreement.

This RFQS is subject to revision after the date of issuance via written addenda. Any such addenda will be posted on the Owner's website, www.flyfresno.com/business-opportunities/. It is each Proposer's responsibility to obtain all RFQS addenda prior to submitting its SOQ. Proposers that have acknowledged receipt for the RFQ in accordance with Section 4.1 (Acknowledgment of RFQS) will receive written addenda.

In no event will the Owner be liable for any costs incurred by any Proposer or any other party in developing or submitting an SOQ.

The Project will be subject to Prevailing Wages and the Owner may provide an Owner Controlled Insurance Program (OCIP) or as commonly known Wrap Up.

1.2 RFQ Organization

- Section 1: Background
- Section 2: Project Overview
- Section 3: Progressive Design-Build Services
- Section 4: Procurement Process
- Section 5: SOQ Submission Requirements
- Section 6: SOQ Evaluation and Selection
- Section 7: Conditions for Proposers
- Attachment A: Definition of Terms
- Attachment B: Scope of Design-Builder Services
- Attachment C: Conceptual Parking Structure Layout
- Attachment D: Project Labor Agreement
- Attachment E: Draft Targeted Hiring Policy
- Attachment F: City of Fresno Conflict of Interest Declaration
- Attachment G: Statement of Qualifications Acknowledgement
- Attachment H: Draft Contract Agreement
- Attachment I: Question Form
- Attachment J: Federal Requirements applicable to all Airport contracts
- Attachment K: Phase One Insurance Requirements

The contents of the RFQS Attachments take priority over any conflicting statements in the RFQS Sections. Certain Project background documents are being made available in the Attachments for the purpose of preparing SOQs. The Owner is providing these documents only for the purpose of obtaining SOQs for the Project and does not confer a license or grant for any other use. The extent to which the Design-Builder may rely on such background documents is set forth in the Attachments.

1.3 Owner's Objectives

By selecting the progressive design-build delivery method for the Project, the Owner is committed to working in close collaboration with the Design-Builder during the preconstruction phase to develop the Project's design, achieve the Project objectives and to develop a mutually agreeable GMP or lump-sum price for delivery of the Project. The Owner's objectives for delivery of the Project are as follows:

- **Deliver a quality and sustainable facility in accordance with industry design and construction standards within the prescribed schedule and budget**
- **Ensure a high degree of cost and schedule certainty**
- **Minimize impacts to ongoing operations**
- **Ease of future expandability**
- **Enhance the customer experience through use of aesthetically pleasing elements, intuitiveness and technology**
- **Incorporation of passive and active security elements**
- **Enhance opportunities to advance sustainability**
- **Achieve an optimal balance of risk allocation between the Owner and the Design-Builder**

Section 2. Project Overview

2.1 Project Scope

FAT is a Small Hub Airport served by AeroMexico, Alaska, Allegiant, American, Delta, Frontier, United and Volaris airlines and their affiliates with nonstop destinations to Chicago, Dallas, Denver, Las Vegas, Los Angeles, Phoenix, Portland, Salt Lake City, San Diego, San Francisco, Seattle, and Guadalajara and Morelia, Mexico. FAT has experienced approximately 67 percent growth in enplanements since 2010. In FY19 FAT is estimated to exceed 1.95 million passengers. FAT has a strong international market with Mexico's Guadalajara region, which has grown to equal 13% of total traffic and our largest individual market.

A 20-year Airport Master Plan Update for FAT was completed in December 2018, and has identified a significant number of Landside (Terminal and parking) capacity Projects that are high priority. Forecasting studies, developed as part of the FAT Master Plan Update, identify continued growth at FAT and recommend a multilevel parking structure located in the existing surface parking lot as the best solution for meeting the airport's near to mid-term parking needs.

Major Elements and Conceptual Design Features

- 900 parking stalls on three levels, level decks with independent ramping
- Third level covered – solar with support system
- Facility support space – maintenance, electrical, IT, other
- Onsite roadway and wayfinding modifications
- Exit plaza modifications – two additional exit lanes and booths
- Covered ground level walkway to Terminal
- 9'-0" wide parking spaces, compact up to 25%
- Architectural facade treatment/branding
- Energy efficient LED lighting and control system
- Intuitive wayfinding and signage system
- Parking Access and Revenue Control System that includes
 - Parking guidance system
 - Count system and variable message LED signage

Construction Considerations

- Cast-in-place or pre-cast concrete options
- Continuity of airport operations during construction
- Fire sprinklers per local ordinance, top level exception possible (solar)
- Floor to structure low-point above clear of utilities (power, data, water, etc.)
- Feasible expansion capability

2.2 Project Budget and Funding

The cost for construction of the Project has been budgeted at \$30 million. Such budget does not include Owner's other Project costs, such as professional advisory services, property or access rights, site investigations, environmental studies, certain governmental approvals, taxes, contingencies, etc. The Owner intends to use airport revenue and loan proceeds to provide the capital funding needed for the Project, which has been secured. **No federal funding will be used on this Project.**

2.3 Project Schedule

It is anticipated that the Phase One Progressive Design-Build Agreement will be executed on or about October 23, 2019. The design, permitting, construction and performance testing of the Project (Phase Two) are expected to be substantially completed by **May 1, 2021**. The following are Project target dates.

| | |
|--|--------------------|
| Solicitation Submission due | August 7, 2019 |
| Design/Build Team Selection | August 21, 2019 |
| Design/Preconstruction Scoping Complete | September 18, 2019 |
| Design/Preconstruction Agreement Award (City Council) | October 10, 2019 |
| Design/Preconstruction Agreement Execution/NTP | October 23, 2019 |
| Design/Preconstruction Effort Substantially Complete | July 22, 2020 |
| Construction Contract Award (City Council) | August 20, 2020 |
| *Early start possible; foundations, long-lead procurements, etc. | |
| Construction Contract Execution | September 16, 2020 |
| Date of Beneficial Occupancy | May 1, 2021 |

2.4 Project Management

Management of all Project delivery phases, including but not limited to, predesign, design, construction and closeout activities will be by the City of Fresno Airports Department.

2.5 Project Labor Agreement and Targeted Hiring Policy

The Project, under this solicitation, will be subject to a Project Labor Agreement and Targeted Hiring Policy, as approved by the City of Fresno City Council. Refer to Attachments D and E respectively. The PLA also reference a Targets Contracting Policy, which will be developed at a later date.

Section 3. Progressive Design-Build Services

3.1 General

As noted in Section 1 and more fully described in Attachment B (Scope of Design-Builder Services), the Design-Builder will provide services in two distinct phases.

Phase One services generally consist of preliminary engineering, geotechnical investigations and design development, as well as preparation, in close collaboration with the Owner, of a proposed price and schedule. The proposed price and schedule will be based on the Project's design (developed to approximately 80 percent design completion), consist of a GMP or lump-sum price, and include supporting documentation, such as detailed open-book costing for the GMP or lump-sum price. Phase two services generally encompass completing the Project's final design, construction and performance testing as necessary.

Should the Owner and Design-Builder be unable to agree on a GMP then the Owner has the right to engage the Project Designer and use the design documents to move the Project forward under an alternative procurement method.

More specifically, it is anticipated Phase One and Phase Two services include, but may not be limited to:

Phase One:

- Develop a Project execution plan, including Project schedule
- Produce the basis-of-design report and preliminary cost estimate
- Develop the architectural/engineering design (including preparing and submitting intermediate design review packages) and value-engineering activities in conjunction with Owner
- Prepare a Project cost model and provide detailed cost estimates as the design and design alternatives are advanced
- Submit and negotiate a GMP or lump-sum price to complete the Phase two services
- Review existing and perform additional engineering studies as required (such as subsurface investigations, etc.) to support design and cost estimating
- Identify Project permitting requirements and initiate certain permitting activities
- Interface with stakeholders as necessary

Phase Two:

- Complete the final design
- Procure equipment and subcontractors
- Secure necessary permits
- Construct Project
- Conduct startup, commissioning and performance testing
- Provide Operation and Maintenance (O&M) manuals
- Provide operator training
- Provide record drawings
- Provide one-year warranty coverage
- Interface with stakeholders as necessary

3.2 Roles and Responsibilities

Owner: The Owner will cooperate with the Design-Builder and will fulfill its responsibilities in a timely manner to facilitate the Design-Builder's timely and efficient performance of services. Owner responsibilities include:

- Review submissions and provide comments to Design-Builder
- Furnish existing studies and provide complete, accurate and reliable data and information regarding the Project, including available record and other drawings of existing facilities and infrastructure, preliminary studies, environmental impact assessments, etc.
- Provide information and provide (or engage Design-Builder to perform) additional studies that may be necessary to complete the Project
- Provide adequate funding
- Provide access to the Project site and any necessary easements
- Obtain the governmental approvals and permits Owner is responsible for, and assist Design-Builder in obtaining governmental approvals and permits it is responsible for
- Provide contract oversight, resident and special inspection, as well as liaison to the public

Design-Builder: The Design-Builder will cooperate with the Owner and will provide in a timely manner the Phase one and Phase two services necessary to complete the Project scope specified in this RFQS. Design-Builder responsibilities include:

- Prepare design and construction documents
- Procure Project subcontractors and vendors
- Supervise subcontractors and Design-Builder personnel
- Obtain all governmental approvals and permits
- Provide and implement a Stormwater Pollution Prevention Plan and other plans and pollution control measures as required by federal, state and local requirements
- Maintain site security
- Implement quality-management procedures
- Implement Project health and safety practices
- Train Owner's staff

Section 4. Procurement Process

4.1 Acknowledgement of RFQS

Each potential Proposer should provide the Owner, within **five (5)** days of receipt of this RFQS, an acknowledgement (Attachment G), that it has received the RFQS and is a potential Proposer. Such acknowledgement shall identify and provide full contact information for the Proposer Contact, who shall be the Proposer's single point of contact for the receipt of any future documents, notices and addenda associated with this RFQS. The acknowledgement must be sent in writing and a copy electronically transmitted to the Owner Contact.

4.2 Communications and Owner Contact

On behalf of the Owner, **Jean Runnels, Capital Development Specialist**, will act as the sole point of contact for this RFQS and shall administer the RFQS process. All communications shall be submitted in writing, by fax, or by email (with confirmation), and shall specifically reference this RFQS. All questions or comments should be directed to the Owner Contact as follows, using question form provided:

Jean Runnels, Capital Development Specialist
City of Fresno Airports Department
4995 E. Clinton Way
Fresno, CA 93727
(559) 621-4521
jean.thomas-runnels@fresno.gov

No oral communications from the Owner, Contact or other individual will be binding unless confirmed by a written addendum. Any contact with City staff other than the Owner Contact or his/her designee without prior written authorization is strictly prohibited and may result in rejection of the SOQ and Proposer.

4.3 Procurement Schedule

The procurement schedule is as follows:

- | | |
|--|------------------------------|
| • Issue RFQS | <i>July 10, 2019</i> |
| • Deadline for questions | <i>August 2, 2019</i> |
| • Submit SOQs | <i>August 7, 2019</i> |
| • SOQ Evaluation/Notice of Intent | <i>August 21, 2019</i> |
| • Contract Scoping and Negotiations Complete | <i>September 18, 2019</i> |
| • Award Phase One Agreement (City Council) | <i>October 10, 2019</i> |

Section 5. Submission Requirements

5.1 Submittal Place and Deadline

Five paper SOQs documents (one original and **four** copies) and an electronic copy (provided on USB Flash Drive or email) must all be received by the Owner no later than **4:00 p.m. on August 7, 2019**, addressed to:

Jean Runnels, Capital Development Specialist
City of Fresno Airports Department
4995 E. Clinton Way
Fresno, CA 93727
Email: Jean.Thomas-Runnels@fresno.gov

Each Proposer assumes full responsibility for timely delivery of its SOQ at the required location. Any SOQ received after the submittal deadline will be deemed non-responsive. The delivered packaging containing the SOQ documents must note "Statement of Qualification Enclosed" on its face, along with the name of the Project. Late, faxed or e-mailed proposals will **NOT** be considered.

If the proposal is delivered by an express mail carrier or by any other means, it is the Proposer's responsibility to ensure delivery to. Owner is **NOT** responsible for deliveries made to any place other than the designated address or for any failure associated with any mode of delivery selected by the Proposer. The decision to refuse or consider a proposal that was received beyond the date/time established in the solicitation shall not be the basis for a protest.

5.2 Submission Format

The SOQ must not exceed **20** total pages printed on one side only (most or all 8½ x 11-inch with 1-inch or greater margins), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of **two** of the total pages may be 11 x 17-inch tri-fold format. Eleven-point font or larger must be used in SOQ Parts 1 - 6.

5.3 Submission Content

The content requirements set forth in this RFQS represent the minimum content requirements for the SOQ. It is the Proposer's responsibility to include information in its SOQ to present all relevant qualifications and other materials. The SOQ, however, should not contain standard marketing or other general materials. It is the Proposer's responsibility to modify such materials so that only directly relevant information is included in the SOQ.

The SOQ must include the following information **in the order listed**:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Design-Builder Profile
- Part 3 – Project Team
- Part 4 – Relevant Experience
- Part 5 – Project Approach
- Appendix A – Forms for Affirmation of Compliance
- Appendix B – Resumes
- Appendix C – Supporting Documentation

5.3.1 Transmittal Letter

Proposers must submit a transmittal letter (**maximum two pages**) on the Proposer's letterhead. It must be signed by a representative of the Proposer who is authorized to sign such material and to commit the Proposer to the obligations contained in the SOQ. The transmittal letter must include the name, address, phone number and email address for the proposer contact and must specify who would be the Design-Builder's signatory to any contract documents executed with the Owner. The transmittal letter may include other information deemed relevant by the Proposer.

5.3.2 Part 1 – Executive Summary

The executive summary (**maximum three pages**) must include a concise overview of the key elements of the SOQ and must summarize and refer to information in the SOQ concerning satisfaction of the Minimum Requirements. The executive summary **shall not** be used to convey additional information not found elsewhere in the SOQ.

5.3.3 Part 2 – Design-Builder Profile

A detailed and complete description of the company proposed as the Design-Builder must be provided in Part 2 of the SOQ. (The term "company" can refer to either a single entity or a joint venture). Information concerning Key Personnel and other firms that may be included on the Project Team, such as sub-consultants and subcontractors, should be provided in Part 3 of the SOQ. The Design-Builder Profile must include the following information.

- **General**
Provide general information about the Design-Builder, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and nonprofessional), years in business, and copies of required licenses. Provide copies of licenses in Appendix C (Supporting Documentation) of the SOQ.
- **Legal structure**
Identify whether the Design-Builder is organized as a corporation, limited liability corporation (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the Owners of the Design-Builder (e.g., shareholders, members, partners, and the like) who hold an interest of 10 percent or more. In SOQ Appendix C, provide information on Owners of the Design-Builder who hold an interest of 10 percent or more.
- **Project office location**
Identify where the Design-Builder intends to maintain its Project office(s) and where the majority of the design work will be performed.

- **Payment and performance bonds**

In SOQ Appendix C, provide a letter from the Design-Builder's surety to verify the availability of a design-build bond of at least \$30 million for this Project. The surety must be authorized by law to do business in **California** and must have an A.M. Best Company Rating of "**A minus and VIII**" or better.

The SOQ must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Design-Builder's ability to perform its contractual commitments. If the Design-Builder has been a legal entity for less than five years, the SOQ must also include the following information for the Designer and the Builder.

- **Material adverse changes in financial position.** Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
- **Legal proceedings and judgments.** List and briefly describe any pending or past (within five years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the general counsel.
- **Completion of contracts.** Has the Design-Builder failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past five years? If so, describe the circumstances.
- **Violation of laws.** Has the Design-Builder been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past five years? If so, describe the circumstances.
- **Debarred from bidding.** Has the Design-Builder been debarred within the past five years, or is it under consideration for debarment, from bidding on public contracts by the federal government or by any state? If so, describe the circumstances.

If any of the above questions is answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Proposer's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Design-Builder's ability to perform its contractual commitments. Include these responses in Appendix C of the SOQ.

The Proposer must notify the Owner of any changes subsequent to submission of the SOQ and before the selection process is completed and, in the case of the selected Proposer, five working days prior to execution of the Design-Build Contract.

5.3.4 Part 3 – Project Team

Describe the composition, organization and management of the Project Team in two separate subsections.

Design-Builder/Other Firms:

- Identify any other firms (such as subcontractors and sub-consultants) included on the Project Team along with the Design-Builder and describe the scope of the Design-Builder's and each firm's services and responsibilities throughout the Project. Clearly identify the firm(s) serving as the Designer and the Builder. Describe the Design-Builder's approach to the management of subcontractors and sub-consultants.

Key Personnel

- Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities throughout the Project.
- Describe the Design-Builder's approach to managing such personnel.
- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time throughout the Project.
- Provide resumes for all Key Personnel in SOQ Appendix B (Resumes). Limit resumes to **two** pages per individual and include:
 - Academic and professional qualifications
 - Professional registration (as applicable)
 - Experience as it relates to the Project and to the individual's specified role on the Project
 - License/registration held and who holds the license and/or registration

Organization Chart

- Provide organization chart showing:
 - Reporting relationships and responsibilities of the Design-Builder and any other firms
 - Reporting relationships and responsibilities of all Key Personnel (along with their firm
 - Affiliations)

Any change in the firms or Key Personnel included in the SOQ would require Owner approval.

Part 4 – Experience

The SOQ must describe the performance history and experience of the Project Team on similar Projects and provide information concerning safety.

Reference Projects

The Proposer shall submit descriptions of reference Projects to demonstrate relevant experience.

Each Project description shall contain at least the following information:

- Name of Owner
- Owner reference and contact information
- Role of Proposer
- Contract value
- Year started and year completed
- Description of the Project showing relevance to this Project
- Firms and Key Personnel that participated in Project and are included in this SOQ, along with a clear description of the Project role and responsibility of each

In addition, provide a summary table to cross-reference the Project Team (firms and Key Personnel) with participation in the referenced Projects.

5.3.5 Part 5 – Project Approach

Provide a conceptual description (maximum six pages) of the Design-Builder's approach for managing and performing its services during the Project. The following items should be addressed:

- Discuss how a collaborative relationship with the Owner would be established during Phase One design development, scheduling and cost estimating
- Discuss how the design and construction processes will interface (including how constructability issues will be addressed)
- Identify the work components critical to the Project's success and how these components would be achieved
- Describe the process for developing the GMP (or lump-sum price) proposal (including the amount of cost contingency)
- Discuss how key risk factors will be identified and mitigated
- Project specific safety plan
- Project specific quality plan
- Schedule

In addition, the Project Approach must include brief descriptions of the Design-Builder's approach to the following:

- Communications (with Owner and other stakeholders, such as regulatory agencies)
- Quality management
- Risk management (including key risk factors)
- Adherence to the GMP or lump-sum price and schedule in the construction phase

Section 6. Evaluation and Selection

6.1 General

The Owner (with assistance provided by outside advisors if desired by Owner) will review and evaluate the SOQs according to the requirements and criteria outlined in this Section. During the SOQ evaluation process, written questions or requests for clarification may be submitted to one or more proposers regarding its SOQ or related matters. Failure to respond in the time allocated to any such questions or requests may be grounds for elimination of the Proposer from further consideration.

Responsiveness

Each SOQ will be reviewed to determine whether it is responsive to the criteria in the RFQ. Failure to comply with the criteria requirements of this RFQS may result in a SOQ being rejected. At the Owner's discretion, the selection committee may declare a minor irregularity and continue with the evaluation process.

6.2 Minimum Requirements

Each responsive SOQ will be reviewed to determine whether it meets the criteria outlined in this subsection. The Owner may waive any minor irregularity and may request clarification or additional information to address any questions that may arise in this regard. Any SOQ that does not satisfy the Minimum Criteria Requirements may be found non-responsive.

- **Performance and payment bonds.** Ability of the Design-Builder to provide a design-build performance bond and payment bond each in the amount of **\$30 million**.
- **Material adverse condition.** The Design-Builder must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.

- **Licensing and registration.** The Design-Builder and each firm must be licensed in **California** for the type of work to be performed. The Designer must include in responsible charge an architect and/or engineer licensed/registered in **California**, as may be relevant to the Project, at time of contract award
- **City of Fresno Business License, required at time of contract award**
- **Design experience.** Within the past 10 years, the Designer must have successfully completed the design of at least **three similar Projects in scope and scale** in the United States.
- **Construction experience.** Within the past 10 years, the Builder must have successfully completed the construction of at least **three similar Projects in scope and scale** in the United States.

6.3 Comparative Evaluation Criteria

The Evaluation Committee will evaluate proposals that successfully meet the Minimum Requirements as outlined in 6.3 in consideration of the following:

- A. Project Understanding. Clear understanding of the Contractor's and Designer's roles and responsibilities, Project goals, program requirements, work plan and timeline.
- B. Contractor's and Designers Experience. Demonstrated prior experience in providing parking structures, handling similar types of Projects, as confirmed by references.
- C. Best Value for the Owner: Proposals that reflect demonstrated competency with competitive proposed GMP for services.
- D. Key Personnel. Quality of staff, prior experience, and commitment of the Design-Builder team's Project manager(s) to the Project.
- E. Small and Diverse Business Participation. The participation of small and diverse businesses on the Project.

Once the Comparative Evaluation is complete the Owner may conduct interviews with one or more of the Proposers.

6.4 Selection

After the evaluation process is complete, the Owner will notify Proposers of the outcome. The selected Proposer will be invited to negotiate with the Owner Phase One terms. If the City determines that it is unable to reach an acceptable contract with the selected Proposer, including failure to agree on a fair and reasonable compensation for the services or any other terms or conditions, the City may terminate negotiations with the selected Proposer, and may commence negotiations with any of the other Proposer(s) until such time as the City has negotiated a contract meeting its needs.

Section 7. Conditions for Proposers

Owner Authority

Owner is a **municipal corporation** of the State of **California**. The procurement process for this Project is authorized under **California law and the City of Fresno**.

7.1 Conflict of Interest

California law mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner officers.

7.2 Proprietary Information

All materials submitted to the Owner become public property and are subject to **California Public Records Act**. If the SOQ contains proprietary information that the Proposer does not want disclosed, such information must be identified and marked "PROPRIETARY" at the time of submittal. Owner will, to the extent provided by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with **the Owner**. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request. Proposers shall not be permitted to mark entire SOQ as proprietary.

7.3 Rights of the Owner

In connection with this procurement process, including the receipt and evaluation of SOQs and award of the Progressive Design-Build Contract, Owner reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFQS, in whole or in part, at any time prior to the execution of the Progressive Design-Build Contract, without incurring any obligations or liabilities
- Modify the procurement schedule
- Waive deficiencies, informalities and irregularities in a SOQ
- Suspend and terminate the procurement process or terminate evaluations of SOQs received
- Permit corrections to data submitted with any SOQ
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Proposers to seek an improved understanding of any information contained in a SOQ
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the SOQs
- Seek clarification from any Proposer to fully understand information provided in the SOQ and to help evaluate the Proposers
- Reject a SOQ containing exceptions, additions, qualifications or conditions not called for in the RFQ or otherwise not acceptable to the Owner
- Conduct an independent investigation of any information, including prior experience, included in a SOQ by contacting Project references, accessing public information, contacting independent parties, or any other means
- Request additional information from a Proposer during the evaluation of its SOQ

7.4 Obligation to Keep Project Team Intact

Proposers are advised that prior to any change in personnel, the Owner must be notified fourteen (14) days in advance. Proposer must provide an organizational chart with all relevant key personnel who will be involved in this Project. If extraordinary circumstances require a change, it must be submitted in writing to the Owner, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Design-Builder's control. However, unauthorized changes to the Project team at any time during the procurement process may result in elimination of the proposer's SOQ.

7.5 Addenda

If any revisions to the RFQS or procurement process become necessary or desirable (at the Owner's sole discretion), the Owner may issue written addenda. The Owner will post all addenda on the Owner Project website at the following address: www.flyfresno.com/business-opportunities/. **It is Proposer's responsibility to obtain all addenda prior to submitting its SOQ.**

7.6 Conflict of Interest

By filing a SOQ, a Proposer certifies that no officer, agent, or employee of the City who has a pecuniary interest in the RFQS has participated in the contract negotiations on the part of the City, that the SOQ is made in good faith, without fraud, collusion or connection of any kind with any other Proposer of the same request for qualifications, and that the Proposer is competing solely in its own behalf without connection with or obligation to, any undisclosed person or firm.

7.7 General Requirements/Conditions

In accordance with the Code of Federal Regulations, 49 CFR parts 23 and 26, the City will carry out applicable federal requirements in the award and administration of any contract awarded hereunder.

The City hereby notifies all interested firms that no person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

Title VI Solicitation Notice -- The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Small and Diverse Business Requirements.

Disadvantaged Business Enterprise (DBE) - Owner encourages and solicits participation of qualified minority and women businesses consistent with the principle of utilizing the most highly qualified and competitive firms.

Prospective Proposers are advised that the City in the solicitation or evaluation of the interested Design-Build teams incurs no obligation or commitments. The City reserves the right to waive or modify any part of this RFQS process without penalty at their sole discretion.

Attachment A

Definition of Terms

The definitions of some of the capitalized terms used in this RFQS are presented below:

Builder – The Design-Builder or other firm (such as a subcontractor or joint-venture partner) that will provide construction services and have responsible charge of construction of the Project.

Designer – The Design-Builder or other firm (such as a subconsultant or joint-venture partner) that will provide professional design services and have responsible charge of the design, including preparation of the construction documents.

-

Design-Builder or Contractor– The entity that is selected to enter into the Progressive Design-Build Contract with the Owner and that will be the single point of accountability to the Owner for delivery of the services and the Project.

Key Personnel – The individuals, employed by Design-Builder or other firms included on the Project Team, who would fill certain key roles in delivery of the Project and related services by the Design- Builder, including the following positions: Project manager, safety manager, design manager, construction manager, and on-site superintendent and any other individuals specifically identified in the SOQ as Key Personnel.

Minimum Requirements – The requirements set forth in Subsection 6.3 of this RFQ that, at a minimum, must be satisfied (or waived by Owner) in order for the SOQ to be evaluated and ranked according to the comparative evaluation criteria.

Owner – City of Fresno, Airports Department

Project – FAT Parking Structure - 2019

Project Team – The Design-Builder, Key Personnel and any additional firms (such as subcontractors and subconsultants) included in the SOQ.

Proposer – The entity responding to this RFQS by submitting the SOQ.

Attachment B

Scope of Design-Builder Services

Phase One Services

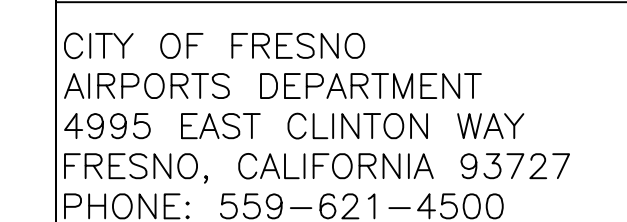
Phase One scope of services performed by the Design-Builder will include (at a minimum) the following detailed tasks and deliverables:

1. Project site and existing conditions review and verification
 - a. Review of existing technical documentation
 - b. Subsurface utility location survey
2. Basis of Design Report preparation
 - a. Bi-weekly team meetings
 - b. Design criteria
 - c. Preliminary design including preliminary Drawings and Technical Specification outlines
 - d. Preliminary construction organization, work plan, and schedule
 - e. Regulatory requirements and permit acquisition planning
 - f. Project budget estimate update
3. 30, 60, and 80 percent design preparation
 - a. Bi-weekly team meetings
 - b. Further Drawing development
 - c. Technical Specification development
 - d. Construction work plan and schedule update
 - e. Subcontract and equipment procurement plan development
 - f. Cost estimate updates
4. Guaranteed Maximum Price (GMP) development
 - a. Phase Two contract finalization and negotiation meetings and team meetings
 - b. GMP proposal development
 - c. Final construction work plan and schedule development
 - d. Final regulatory and permitting plan
5. Project Management
 - a. Project Management Plan development and implementation
 - b. Quality Plan development and implementation
 - c. Administering biweekly team meetings and updates
 - d. Progress meetings and progress reports
 - e. Progress payment and invoicing

Phase Two Services

Phase Two scope of services performed by the Design-Builder will be further defined and negotiated during execution of Phase One services and will generally include assistance in obtaining regulatory approval and permit acquisition, preparation of "issued for construction" design documents, procurement of materials, equipment, subcontractors, construction and construction management services, engineering services during construction, start-up, testing, commissioning and training, preparation of record documents and O&M manuals, and warranty services.

Attachment C
Conceptual Layout of Parking Structure



| |
|------------------------|
| CONSULTANT INFORMATION |
|------------------------|

[illegible]

AIRPORTS DEPARTMENT

PROPOSED PARKING STRUCTURE
CONCEPTUAL PLAN
SITE PLAN

DIRECTOR OF
AVIATION

KEVIN R. MEIKLE, ARCHITECT

PROJECT MGR.

CONST. MGR.

PLANNING MGR.

PROJECT I.D.

DRAWN BY: NR

CHECKED BY: _____ KRI

DATE: 05/03/201

SHEET NO.

1

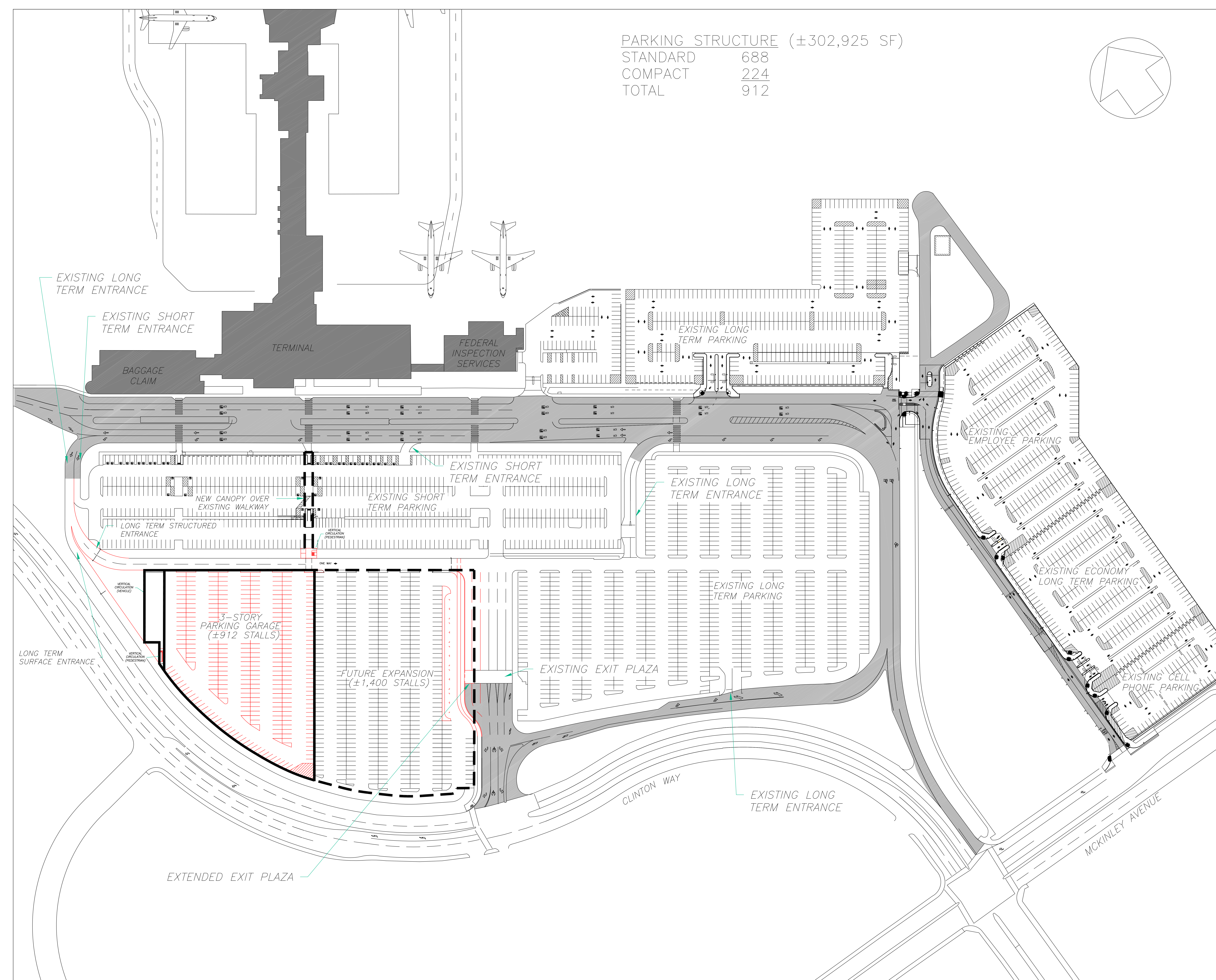
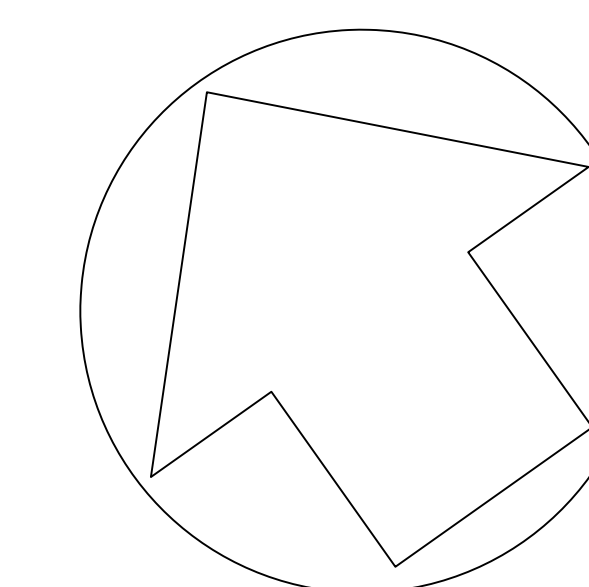
OF 6 SHEETS:

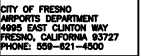
PARKING STRUCTURE (±302,925 SF)

STANDARD 688

| | |
|---------|-----|
| COMPACT | 224 |
|---------|-----|

| | |
|-------|-----|
| TOTAL | 912 |
|-------|-----|





CONSULTANT INFORMATION

| REVISIONS/REFERENCE | | |
|---------------------|---------|----------------|
| NO. | DATE | DESCRIPTION |
| 1 | 10/1/80 | INITIAL DESIGN |
| 2 | 10/1/80 | REVISION 1 |
| 3 | 10/1/80 | REVISION 2 |
| 4 | 10/1/80 | REVISION 3 |
| 5 | 10/1/80 | REVISION 4 |
| 6 | 10/1/80 | REVISION 5 |
| 7 | 10/1/80 | REVISION 6 |
| 8 | 10/1/80 | REVISION 7 |
| 9 | 10/1/80 | REVISION 8 |
| 10 | 10/1/80 | REVISION 9 |
| 11 | 10/1/80 | REVISION 10 |
| 12 | 10/1/80 | REVISION 11 |
| 13 | 10/1/80 | REVISION 12 |
| 14 | 10/1/80 | REVISION 13 |
| 15 | 10/1/80 | REVISION 14 |
| 16 | 10/1/80 | REVISION 15 |
| 17 | 10/1/80 | REVISION 16 |
| 18 | 10/1/80 | REVISION 17 |
| 19 | 10/1/80 | REVISION 18 |
| 20 | 10/1/80 | REVISION 19 |
| 21 | 10/1/80 | REVISION 20 |
| 22 | 10/1/80 | REVISION 21 |
| 23 | 10/1/80 | REVISION 22 |
| 24 | 10/1/80 | REVISION 23 |
| 25 | 10/1/80 | REVISION 24 |
| 26 | 10/1/80 | REVISION 25 |
| 27 | 10/1/80 | REVISION 26 |
| 28 | 10/1/80 | REVISION 27 |
| 29 | 10/1/80 | REVISION 28 |
| 30 | 10/1/80 | REVISION 29 |
| 31 | 10/1/80 | REVISION 30 |
| 32 | 10/1/80 | REVISION 31 |
| 33 | 10/1/80 | REVISION 32 |
| 34 | 10/1/80 | REVISION 33 |
| 35 | 10/1/80 | REVISION 34 |
| 36 | 10/1/80 | REVISION 35 |
| 37 | 10/1/80 | REVISION 36 |
| 38 | 10/1/80 | REVISION 37 |
| 39 | 10/1/80 | REVISION 38 |
| 40 | 10/1/80 | REVISION 39 |
| 41 | 10/1/80 | REVISION 40 |
| 42 | 10/1/80 | REVISION 41 |
| 43 | 10/1/80 | REVISION 42 |
| 44 | 10/1/80 | REVISION 43 |
| 45 | 10/1/80 | REVISION 44 |
| 46 | 10/1/80 | REVISION 45 |
| 47 | 10/1/80 | REVISION 46 |
| 48 | 10/1/80 | REVISION 47 |
| 49 | 10/1/80 | REVISION 48 |
| 50 | 10/1/80 | REVISION 49 |
| 51 | 10/1/80 | REVISION 50 |
| 52 | 10/1/80 | REVISION 51 |
| 53 | 10/1/80 | REVISION 52 |
| 54 | 10/1/80 | REVISION 53 |
| 55 | 10/1/80 | REVISION 54 |
| 56 | 10/1/80 | REVISION 55 |
| 57 | 10/1/80 | REVISION 56 |
| 58 | 10/1/80 | REVISION 57 |
| 59 | 10/1/80 | REVISION 58 |
| 60 | 10/1/80 | REVISION 59 |
| 61 | 10/1/80 | REVISION 60 |
| 62 | 10/1/80 | REVISION 61 |
| 63 | 10/1/80 | REVISION 62 |
| 64 | 10/1/80 | REVISION 63 |
| 65 | 10/1/80 | REVISION 64 |
| 66 | 10/1/80 | REVISION 65 |
| 67 | 10/1/80 | REVISION 66 |
| 68 | 10/1/80 | REVISION 67 |
| 69 | 10/1/80 | REVISION 68 |
| 70 | 10/1/80 | REVISION 69 |
| 71 | 10/1/80 | REVISION 70 |
| 72 | 10/1/80 | REVISION 71 |
| 73 | 10/1/80 | REVISION 72 |
| 74 | 10/1/80 | REVISION 73 |
| 75 | 10/1/80 | REVISION 74 |
| 76 | 10/1/80 | REVISION 75 |
| 77 | 10/1/80 | REVISION 76 |
| 78 | 10/1/80 | REVISION 77 |
| 79 | 10/1/80 | REVISION 78 |
| 80 | 10/1/80 | REVISION 79 |
| 81 | 10/1/80 | REVISION 80 |
| 82 | 10/1/80 | REVISION 81 |
| 83 | 10/1/80 | REVISION 82 |
| 84 | 10/1/80 | REVISION 83 |
| 85 | 10/1/80 | REVISION 84 |
| 86 | 10/1/80 | REVISION 85 |
| 87 | 10/1/80 | REVISION 86 |
| 88 | 10/1/80 | REVISION 87 |
| 89 | 10/1/80 | REVISION 88 |
| 90 | 10/1/80 | REVISION 89 |
| 91 | 10/1/80 | REVISION 90 |
| 92 | 10/1/80 | REVISION 91 |
| 93 | 10/1/80 | REVISION 92 |
| 94 | 10/1/80 | REVISION 93 |
| 95 | 10/1/80 | REVISION 94 |
| 96 | 10/1/80 | REVISION 95 |
| 97 | 10/1/80 | REVISION 96 |
| 98 | 10/1/80 | REVISION 97 |
| 99 | 10/1/80 | REVISION 98 |
| 100 | 10/1/80 | REVISION 99 |
| 101 | 10/1/80 | REVISION 100 |
| 102 | 10/1/80 | REVISION 101 |
| 103 | 10/1/80 | REVISION 102 |
| 104 | 10/1/80 | |

[illegible]SPORTS DEPARTMENT
PROPOSED PARKING STRUCTURE
CONCEPTUAL PLAN
GROUND LEVEL

**DIRECTOR OF
AVIATION**
KEVIN R. MEIKLE, ARCHITECT

PROJECT MGR. _____
CONST. MGR. _____
PLANNING MGR. _____

PROJECT I.D. _____

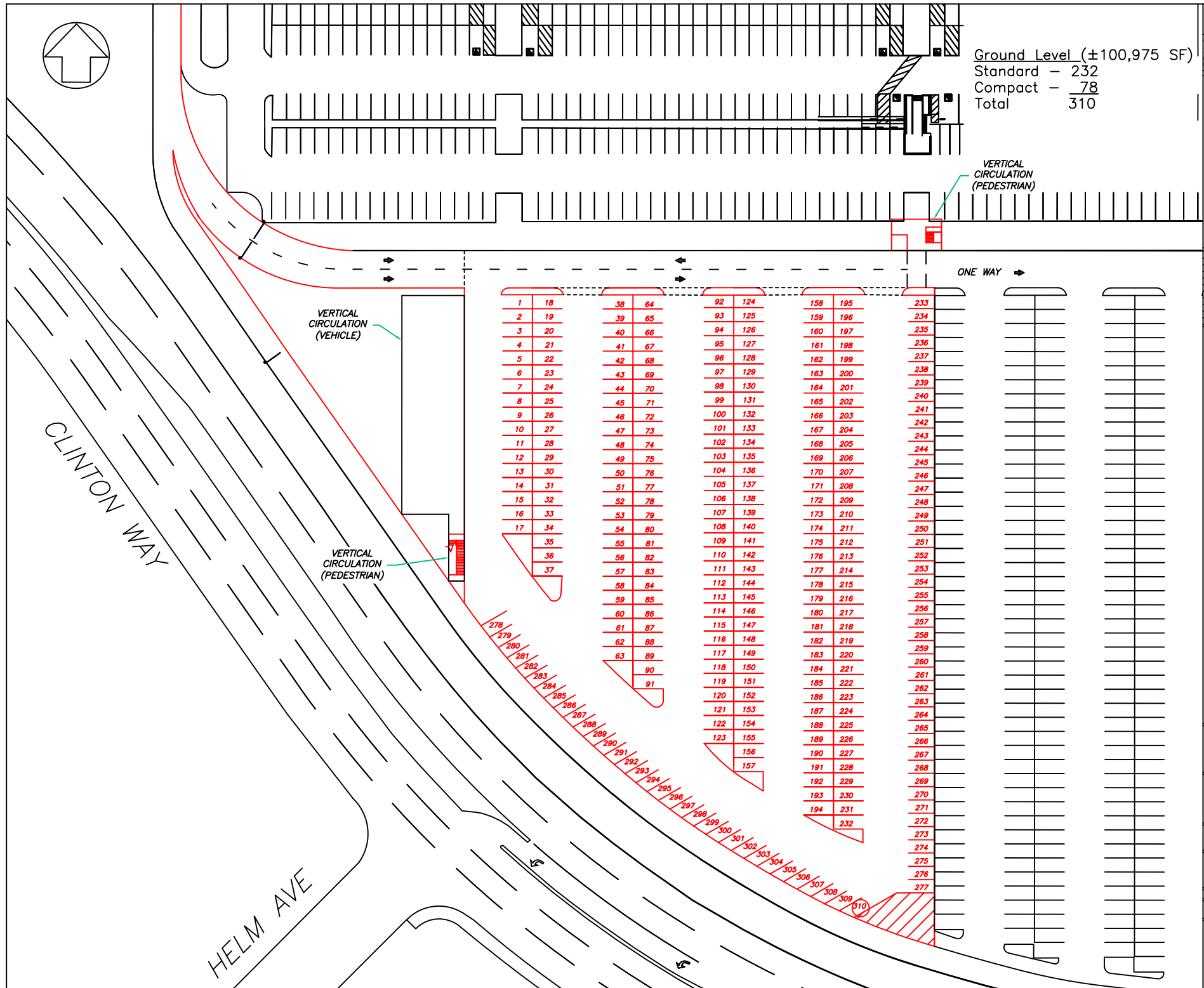
DRAWN BY: _____ NRC
CHECKED BY: _____ KRM
DATE: _____ 05/03/2019
SCALE: _____ N/A

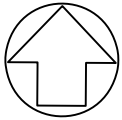
| | |
|------------------|---|
| FILE: | - |
| CITY DRAWING NO. | |
| XX-X-XXXX | |

SHEET NO.

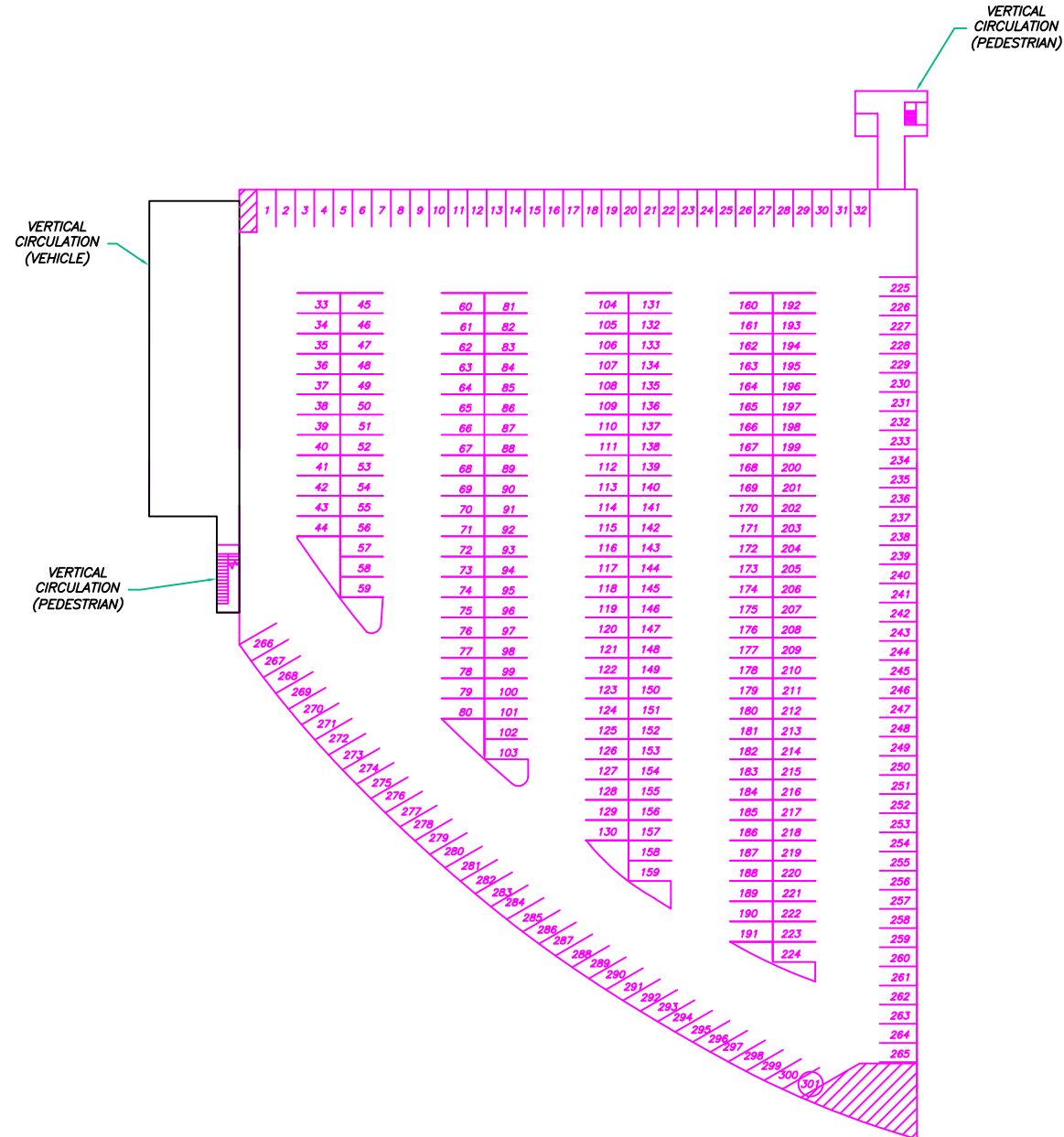
2

OF 6 SHEETS





2ND Level (±100,975 SF)
Standard - 228
Compact - 73
Total 301



| REV NO. | DATE | DESCRIPTION |
|---------|------|-------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

AIRPORTS DEPARTMENT
PROPOSED PARKING STRUCTURE
CONCEPTUAL PLAN
2ND LEVEL

DIRECTOR OF
AVIATION
KEVIN R. MEKLE, ARCHITECT

PROJECT MGR. _____

CONST. MGR. _____

PLANNING MGR. _____

PROJECT I.D. _____

DRAWN BY: NSC

CHECKED BY: NSM

DATE: 05/03/2018

SCALE: N/A

FILE: _____

CITY DRAWING NO. _____

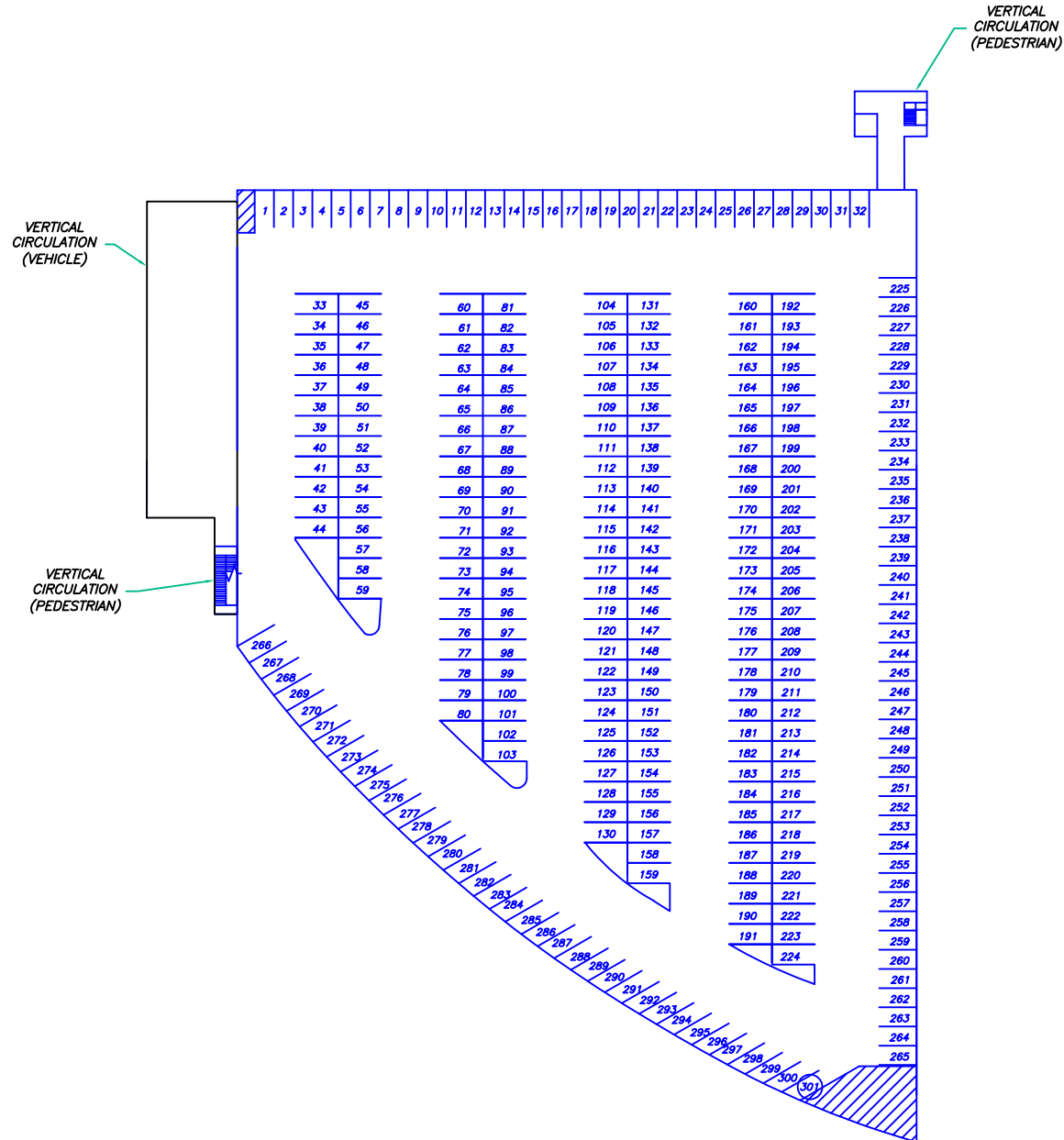
SHEET NO. _____

3

OF 6 SHEETS



3RD Level (±100,975 SF)
Standard - 228
Compact - 73
Total 301



| REVISIONS / REFERENCE | | | |
|-----------------------|------|-------------|--|
| REV NO. | DATE | DESCRIPTION | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

AIRPORTS DEPARTMENT
PROPOSED PARKING STRUCTURE
CONCEPTUAL PLAN
3RD LEVEL

DIRECTOR OF
AVIATION
KEVIN R. MEKLE, ARCHITECT

PROJECT MGR. _____
CONST. MGR. _____
PLANNING MGR. _____

PROJECT I.D. _____

DRAWN BY: NSC
CHECKED BY: NSM
DATE: 05/03/2018
SCALE: N/A

FILE:
CITY DRAWING NO.
XX-X-XXXX

SHEET NO.

4

OF 6 SHEETS

| REV. NO. | DATE | DESCRIPTION |
|----------|------|-------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

AIRPORTS DEPARTMENT
PROPOSED PARKING STRUCTURE
CONCEPTUAL PLAN
PEDESTRIAN CIRCULATION

DIRECTOR OF AVIATION
KEVIN R. MEKLE, ARCHITECT

PROJECT MGR. _____
CONST. MGR. _____
PLANNING MGR. _____
PROJECT I.D. _____

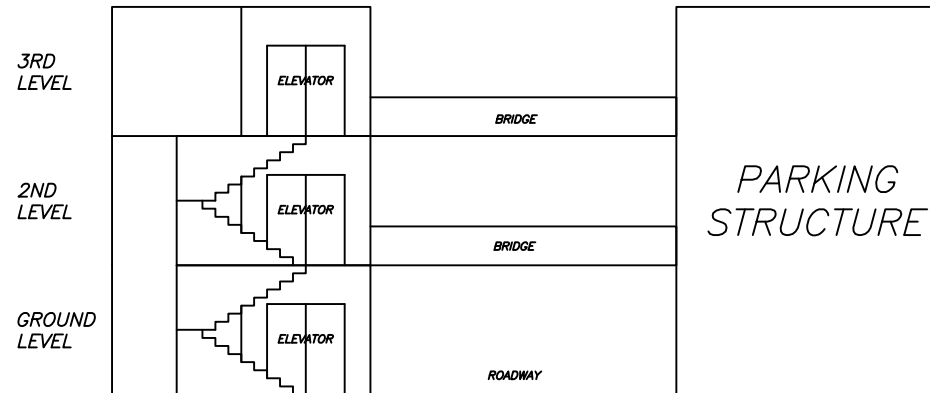
DRAWN BY: NRC
CHECKED BY: XRM
DATE: 05/03/2019
SCALE: N/A
FILE: _____

CITY DRAWING NO.
XX-X-XXXX

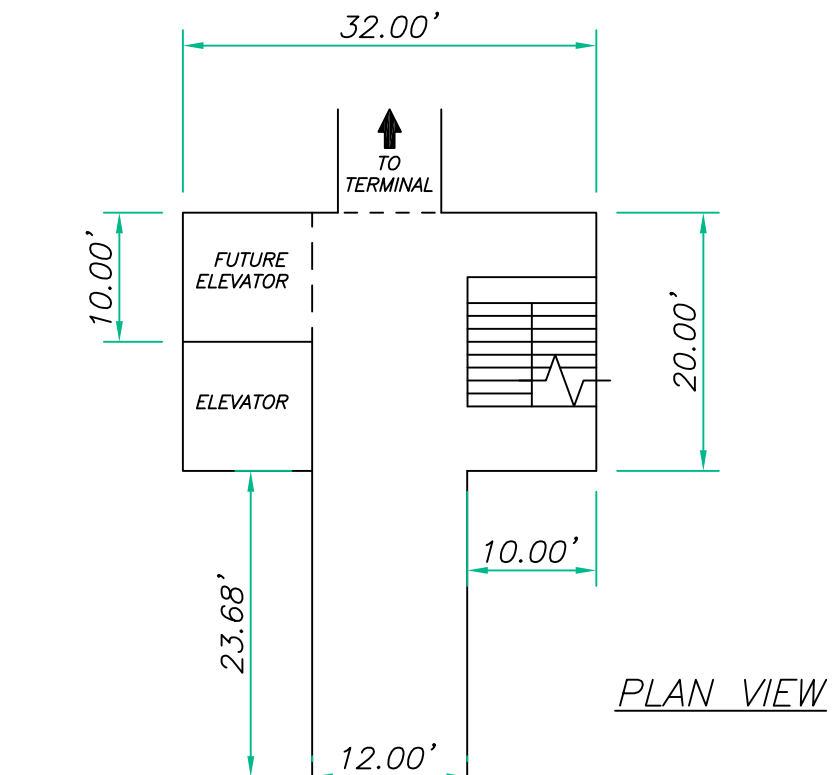
SHEET NO.

5

OF 6 SHEETS

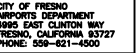


ELEVATION VIEW



PLAN VIEW

PARKING STRUCTURE



CONSULTANT INFORMATION

[illegible]

PROPOSED PARKING STRUCTURE
CONCEPTUAL PLAN
EXTENDED EXIT PLAZA

**DIRECTOR OF
AVIATION**
KEVIN R. MEIKLE, ARCHITECT

PROJECT MGR. _____
CONST. MGR. _____
PLANNING MGR. _____

PROJECT I.D. _____

DRAWN BY: _____ NRC
CHECKED BY: _____ KRM
DATE: 05/03/2019
SCALE: _____ N/A

FILE: -

CITY DRAWING NO.
XX-X-XXXX

SHEET NO.

6
OF 6 SHEETS

ATTACHEMENT D

PROJECT LABOR AGREEMENT

PROJECT LABOR AGREEMENT BY AND BETWEEN
THE CITY OF FRESNO AND
FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL
AND THE SIGNATORY CRAFT COUNCILS AND UNIONS COVERING
CONSTRUCTION OF
THE FRESNO YOSEMITE INTERNATIONAL AIRPORT EXPANSION PROJECT

TABLE OF CONTENTS

| | Page |
|---|------|
| ARTICLE 1 DEFINITIONS | 3 |
| ARTICLE 2 SCOPE OF THE AGREEMENT | 6 |
| ARTICLE 3 UNION RECOGNITION AND EMPLOYMENT | 10 |
| ARTICLE 4 UNION ACCESS AND STEWARDS | 14 |
| ARTICLE 5 WAGES AND BENEFITS..... | 15 |
| ARTICLE 6 HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS | 16 |
| ARTICLE 7 WORK STOPPAGES AND LOCK-OUTS | 17 |
| ARTICLE 8 WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES | 20 |
| ARTICLE 9 MANAGEMENT RIGHTS | 20 |
| ARTICLE 10 SETTLEMENT OF GRIEVANCES AND DISPUTES..... | 23 |
| ARTICLE 11 REGULATORY COMPLIANCE..... | 25 |
| ARTICLE 12 SAFETY AND PROTECTION OF PERSON AND PROPERTY | 25 |
| ARTICLE 13 TRAVEL AND SUBSISTENCE | 26 |
| ARTICLE 14 APPRENTICES | 26 |
| ARTICLE 15 PRE-JOB CONFERENCES | 27 |
| ARTICLE 16 LABOR/MANAGEMENT COOPERATION | 28 |
| ARTICLE 17 SAVINGS AND SEPARABILITY..... | 28 |
| ARTICLE 18 WAIVER | 28 |
| ARTICLE 19 AMENDMENTS AND AMBIGUITY | 28 |
| ARTICLE 20 EFFECTIVENESS AND DURATION OF THE AGREEMENT..... | 29 |
| ATTACHMENT A - LETTER OF ASSENT | 33 |
| ATTACHMENT B – SIDE LETTER RE OFF-SITE | 34 |
| ATTACHMENT C - DAS 7- AGREEMENT TO TRAIN APPRENTICES..... | 35 |
| ATTACHMENT D - CRAFT EMPLOYEE REQUEST FORM..... | 36 |
| ATTACHMENT E - SIDE LETTER RE COMPETITIVENESS IN SUBCONTRACTS | 37 |
| ATTACHMENT F - DESIGNATED ARBITRATORS | 38 |
| ATTACHMENT G - SUBSTANCE ABUSE POLICY | 40 |

**CITY OF FRESNO
PROJECT LABOR AGREEMENT
COVERING
CONSTRUCTION OF THE
FRESNO YOSEMITE INTERNATIONAL AIRPORT EXPANSION PROJECT**

This Project Labor Agreement pertains to construction of the Fresno Yosemite International Airport Expansion Project (Project), and shall be effective upon adoption by the City Council of the City of Fresno and execution by the Fresno, Madera, Tulare, Kings Building and Construction Trades Council and all of its affiliate signatory craft councils and unions listed on the signature page hereto.

This Agreement establishes labor relations policies and procedures for Project Work performed by Contractors and crafts persons employed by the Contractors who are represented by the Unions. The City, Council, and Unions are referred to herein as "Parties." It is understood by the Parties that all contractors of any tier that perform Project Work shall be bound by the terms of this Agreement, directly or through the Letter of Assent (a form of which is attached as "Attachment A"), except as otherwise indicated herein. The City shall include, directly or by incorporation by reference, the requirements of this Agreement in the advertisement of and/or specifications for the two Prime Contracts under which all Project Work shall be performed.

The City shall designate a PLA Administrator, either from its own staff or an independent contractor, to: (1) serve as the City's liaison for Contractors and other persons; (2) monitor compliance with this Agreement; (3) assist, as the authorized representative of the City, in developing and implementing the programs referenced herein, all of which are critical to fulfilling the intent and purposes of the Parties and this Agreement; and (4) otherwise implement and administer this Agreement. For such purposes, the Unions and Contractors recognize the PLA Administrator as the City's agent.

PURPOSE

The purpose of this Agreement is to establish and foster continued cooperation between management and labor in order to complete the construction of the Fresno Yosemite International Airport Expansion Project economically, efficiently, continuously and without any interruption, delays or work stoppages, thereby promoting the public interest. The purpose is also to increase employment opportunities for certain individuals who reside in the City and other local areas, and to provide expanded training opportunities through apprenticeship and pre-apprenticeship programs for such individuals.

RECITALS

WHEREAS, the Project consists of two discrete phases: (1) construction of an approximately-900-stall garage and (2) expansion of an airport passenger terminal; and WHEREAS, the funds available for this project total approximately \$110 million, including federal funds for terminal construction, and there is little possibility of additional funding from other sources; and

WHEREAS, there is also little flexibility with respect to the scope of the project, which is based upon extensive research on the growing needs of Central Valley residents and travelers; and

WHEREAS, the design and construction of the garage and terminal will be separate projects, and will not necessarily be procured or constructed contemporaneously; and

WHEREAS, each phase of the Project will be separately procured, using a design-build process in which a design team will work directly with that contractor in the development of plans; and

WHEREAS, at the conclusion of the design phase of each phase, the contractor working with the selected design team will present a guaranteed maximum price for the construction work, and the Airport will have the option to accept or reject that proposal; and

WHEREAS, should the Airport recommend acceptance of the construction proposal, will be subject to separate approval by the City Council; and

WHEREAS, should the Airport reject a construction proposal for a component of the project after the design process is complete due to excessive cost, and initiate a subsequent procurement process, with possible design revisions to control costs, this agreement may apply to the subsequent procurement process with consent of all parties; and

WHEREAS, the parties acknowledge that completion of the project on time and under budget is a particular challenge due to the large amount of construction occurring in the Central Valley and elsewhere, and potential labor shortages; and

WHEREAS, the Project is an opportunity to provide training for apprentices from the area surrounding the Airport; and

WHEREAS, the Unions are committed to utilizing their apprenticeship programs to create a pipeline for local pre-apprenticeship programs to the maximum extent possible, so that the Project can assist in bringing disadvantaged workers and residents of low-income neighborhoods into steady employment in the building trades; and

WHEREAS, federal funding for terminal construction requires efforts to direct employment and business opportunities to certain categories of workers and contractors, pursuant to federal law; and

WHEREAS, construction will occur on Airport property, requiring certain security measures and clearances for Project workers; and

WHEREAS, local unions have established training and apprenticeship programs, as well as local hiring halls with a supply of available labor; and

WHEREAS, While contractors constructing Project have yet to be selected, the Project will involve large numbers of workers from across many crafts and trades, and will require non-union employees to work side-by-side with union labor, creating a substantial potential for disruption from work stoppages over labor disputes and jurisdictional disputes; and

WHEREAS, Given the importance of avoiding construction delays and increased costs, entering into a PLA between the City and the Fresno, Madera, Tulare, Kings Building and Construction Trades Council with regard to the Project will advance the City's goals

by providing for peaceful settlement of labor disputes and grievances without strikes or lockouts, controlling costs, increasing efficiency, providing safe working conditions, and maintaining the highest quality of construction work; and

WHEREAS, the interests of the City, its residents, residents throughout the Central Valley, and travelers using the Airport, and the Unions and the Contractors will be best served if the construction work proceeds in an orderly manner without disruption due to strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns, or other interference with work; and

WHEREAS, The City and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on Project Work subject to this Agreement in order to promote a satisfactory, continuous and harmonious relationship among the Parties to the PLA; and

WHEREAS, The Parties wish to establish effective, prompt, and binding procedures for the resolution of all labor disputes and provide mechanisms for labor-management cooperation on matters of mutual interest and concern; and

WHEREAS, This Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect while Project work is performed, insofar as a legally binding agreement exists between any Contractors and the Unions, except to the extent that the provisions of this Agreement are inconsistent with such collective bargaining agreements, in which case, the provisions of this Agreement shall prevail; and

WHEREAS, The Contracts for the construction of the Project Work will be awarded in accordance with the applicable provisions of local, state and federal laws; and

WHEREAS, the Parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory completion of the Project;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE 1 DEFINITIONS

Section 1.1 The use of masculine or feminine gender or titles in this Agreement shall be construed as including both genders and not as gender limitations. Further, the use of Article titles and/or Section headings are for information only, and carry no legal significance. The following definitions contain both the singular and plural form:

“Agreement” or “PLA” means this Project Labor Agreement.

“Apprentice” means an employee indentured and participating in an Approved Apprenticeship Program.

“City” means the City of Fresno.

“Construction Contract” means the Prime Contract and any subcontract thereunder, of any tier.

"Contractor" means any individual firm, partnership, or corporation, or combination thereof, including joint ventures, that is an independent business enterprise and that has entered into a Construction Contract.

"Core Worker" means an employee who satisfies both of the following criteria: (1) appears on a Contractor's active payroll for sixty (60) of the one hundred (100) working days immediately before the award of Project Work to the Contractor; and (2) possesses all licenses or certifications required by state or federal law or guidelines for the Project Work to be performed.

"Council" means the Fresno, Madera, Tulare, Kings Building and Construction Trades Council.

"Design-Build Contract" means a Design-Build Contract awarded by the City for either the Parking Garage Expansion or the Terminal Expansion.

"Joint Labor/Management Apprenticeship Program" means a joint Union and contractor administered apprenticeship program certified by the State of California, Department of Industrial Relations, Division of Apprenticeship Standards.

"Letter of Assent" means the document that each Contractor (of any tier) must sign and submit to the City before beginning any Project Work, which formally binds such Contractor(s) to adherence to all the terms, requirements and conditions of this Agreement, in the form of Attachment A.

"Parking Garage Expansion" means the parking garage expansion component of the Fresno Yosemite International Airport Expansion Project.

"Prevailing Wage Determinations" means the Director's General Prevailing Wage Determinations issued by the California Department of Industrial Relations.

"Prime Contract" means the construction contract for either the Parking Garage Expansion Project or the Terminal Expansion Project, awarded by the City to the contractor that was designated as the prime construction contractor as part of the Design-Build Contract for that component of the Project.

"Prime Contractor" means a contractor awarded a Prime Contract.

"Project" means construction of the Fresno Yosemite International Airport Expansion Project pursuant to the Prime Contracts, consisting of two components: the Parking Garage Expansion, and the Terminal Expansion.

"Project Work" means construction work pursuant to the guaranteed maximum price construction proposal accepted by the City pursuant to a Prime Contract, as provided and limited by Article II of this Agreement, and within the Prevailing Wage Determinations.

"Project Site" means any property or area made available to a Contractor by the City for the sole purpose of performing Project Work.

"Schedule A Agreement" means the local collective bargaining agreement of a Union. Each Union shall provide the City with all applicable Schedule A Agreements prior to execution of this Agreement, without which the execution by a Union is not effective.

"Subcontractor Disclosure Conference" means, for each component of the Project, a conference at which the proposed Prime Contractor shall issue a proposed slate of subcontractors and scopes for that component of the Project, with an indication of

proposed jurisdictional assignments and any utilization of exceptions described in this Agreement.

“Subscription Agreement” means an agreement between a Contractor and a Union’s Labor/Management Trust Fund(s) that authorizes and requires the Contractor to make the appropriate fringe benefit contributions in accordance with the terms of a Schedule A Agreement while the Contractor is performing Project Work.

“Targeting Contracting Policy” means the policies included in the Prime Contracts requiring the Prime Contractor to attempt to utilize subcontractors of specified categories, at all tiers.

“Targeted Hiring Policy” means the policies included in the Prime Contracts requiring Contractors to attempt to utilize workers in specified categories. Such policy shall include: (i) for federally-funded portions of the Project, compliance with goals for utilization of minorities and women as required by U.S. Executive Order 11246, and any additional hiring goals established by the City, within federal guidelines; and (ii) for non-federally-funded portions of the Project, journey-level and apprentice-level project work hours utilization goals for residents of designated low-income neighborhoods in Fresno City and County, and disadvantaged workers.

“Targeted Workers” shall mean a worker in a category of workers specified in the Targeted Hiring Policy.

“Terminal Expansion Project” means the airport terminal expansion component of the Fresno Yosemite International Airport Expansion Project.

“Union” means a construction trade union that has executed this Agreement.

ARTICLE 2 SCOPE OF THE AGREEMENT

Section 2.1 General. This Agreement shall apply and is limited to Project Work, performed by those Contractor(s) of whatever tier that have contracts awarded for such work.

Section 2.2 Specific.

(a) The work covered by this Agreement shall be limited to any and all demolition, and construction work performed under a Prime Contract.

(b) This Agreement will not be adhered to at any time prior to the effective date, or after its expiration or termination, or on projects or contracts other than the Prime Contracts for the Parking Garage Expansion Project and the Terminal Expansion Project. This Agreement shall in no way limit the City’s right to award, terminate, modify or rescind either Prime Contract or any related subcontracts or agreements; nor shall it affect construction contracts awarded separate from the Prime Contracts, even if such contracts awards utilize designs developed through a Design-Build Contract.

Section 2.3 Applicability. The terms of this Agreement will be available to, and will fully apply to, any contractor performing Project Work, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis. This Agreement shall not apply to any work of any Contractor other than the Project Work

specifically covered by this Agreement. No contractor shall be required become signatory to a union Schedule A Agreement as a result of performing Project Work.

Section 2.4 Exclusions. Items specifically excluded from the scope of this Agreement include:

(a) Work of non-manual employees, including but not limited to: superintendents; teachers; supervisors (except those covered by Schedule A Agreements at or below the level of general foreman); staff engineers; time keepers; mail carriers; clerks; office workers; messengers; guards; safety personnel; emergency medical and first aid technicians; and other professional, engineering, executive, administrative, supervisory and management employees;

(b) Equipment and machinery owned, controlled, or operated by the City;

(c) All off-site manufacture, fabrication and handling of materials, equipment or machinery, unless otherwise provided for in a side letter (attached as "Attachment B"). Work performed at lay down or storage areas for equipment or material and manufacturing (prefabrication) sites, dedicated solely to the Project, and the movement of materials or goods between such locations and the Project site are within the scope of this Agreement;

(d) All work performed by City employees, the PLA Administrator, design teams (including, but not limited to, architects, engineers and master planners), any other consultants for the City (including, but not limited to, project managers and construction managers and their employees not engaged in Project Work) and their sub-consultants, and other employees of professional service organizations not performing manual labor within the scope of this Agreement;

(e) Any work performed on, near, or leading to a site of work covered by this Agreement undertaken by state, county or other governmental bodies, or their contractors; and/or by public utilities, or their contractors; and/or by adjacent third party landowners; and/or by the City or its contractors (for work not within the scope of this Agreement);

(f) Off-site maintenance of leased equipment and on-site supervision of such work;

(g) Work by employees of, or contractors retained by, a manufacturer or vendor, necessary to maintain such manufacturer's or vendor's warranties or guaranty;

(h) Non-construction support services contracted by the City, City consultants, the PLA Administrator, or a Contractor in connection with a Project;

(i) Laboratory work for testing;

(j) All work by employees of the City or its contractors involving services, operation and/or general maintenance and/or repair and/or cleaning; and

(k) The delivery of supplies, equipment or materials that are stockpiled for later use; provided, however that this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process. This agreement also covers the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud to the

extent the individuals engaged in such activities are covered by prevailing wage law, prevailing wage rates established by the California Department of Industrial Relations and the National Labor Relations Act. Contractor(s)/Employer(s) of persons providing covered construction trucking work shall provide certified payroll records to the City of Fresno to the extent required by bid specifications.

(l) Exclusions per the side letter incorporated into this Agreement and attached as Attachment E.

(m) In an effort to promote satisfaction of goals set forth in Targeted Contracting Policies, the Parties agree that subcontracts individually estimated at under \$1 million in value, may be awarded to Targeted Contractors by the Prime Contractor or other Contractors without application of this Agreement. The maximum total amount of all such subcontracts under each Prime Contract shall be limited to 5% of the value of that Prime Contract, once that \$5 million limit is reached for a Prime Contract. Work performed under such subcontracts by Targeted Contractors shall not be considered Project Work. All such subcontracts shall nonetheless be required to comply with Targeted Hiring Policies, as required by Prime Contracts. At the Subcontractor Disclosure Conference for each component of the Project, the proposed Prime Contractor shall notify the Council and the City regarding any proposed utilization of this provision, and the estimated amount of construction work that would fall under such subcontracts.

Section 2.5 Awarding of Contracts.

(a) This Agreement permits all qualified Contractors and subcontractors to bid for and be awarded work on the Project without regard to whether they are otherwise parties to collective bargaining agreements provided only that such Contractors and subcontractors are ready, willing, and able to execute and comply with this Agreement should such Contractors and subcontractors be awarded work covered by this Agreement.

(b) All Contractors and subcontractors of whatever tier who have been awarded contracts for work covered by this Agreement shall be required to accept and be bound to the terms and conditions of this Agreement, and shall evidence their acceptance by the execution of the Letter of Assent set forth in "Attachment A," prior to the commencement of work. At the time that any Contractor enters into a subcontract with any subcontractor of any tier providing for the performance of a Construction Contract, the Contractor shall provide a copy of this Agreement to the subcontractor and shall require the subcontractor, as a part of accepting the award of a construction subcontract, execute the Letter of Assent prior to the commencement of Project Work. No Contractor or subcontractor shall commence Project Work without having first provided a copy of the Letter of Assent executed by it to the PLA Administrator and to the Council.

Section 2.6 Coverage Exception.

(a) This Agreement shall not apply if the City receives funding or assistance from any federal, state, local or other public entity for Project Work if a requirement, condition or other term of receiving that funding or assistance, at the time of the awarding of the contract, is that the City not require bidders, contractors, subcontractors or other persons or entities to enter into a PLA or other similar agreement with one or more labor

organizations. The City agrees that it will make every effort to defend the terms of this Agreement with any governmental agency or granting authority.

(b) In cases of conflict other than those addressed in Section 2.6(a), where particular provisions of this Agreement would be prohibited by federal or state law, or where the application of this Agreement would violate or be inconsistent with the terms, conditions or contingencies of a grant or a contract with an agency of the United States or the State of California, then the Fresno City Manager shall be authorized to modify the requirements of this Agreement to advance the purposes of this Agreement to the maximum extent feasible without conflicting with federal or state law or with terms, conditions or contingencies of the state or federal grant or contract in question. The City shall include these revised provisions in the Prime Contracts with regard to the project or portions of the project for which this Agreement would conflict with federal or state requirements.

Section 2.7 Schedule A Agreements.

(a) The provisions of this Agreement include the Schedule A Agreements which may be changed from time to time. Except where otherwise provided herein, Schedule A Agreements are incorporated herein by reference and shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreement which may conflict with or differ from the terms of this Agreement.

(b) This Agreement does not apply to work performed under the National Cooling Tower Agreement, the National Stack Agreement, the National Transit Division Agreement (NTD), or within the jurisdiction of the International Union of Elevator Constructors and all instrument calibration and loop checking work performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, except that the Articles of this Agreement dealing with Work Stoppages and Lock-Outs, Work Assignments and Jurisdictional Disputes, and Settlement of Grievances and Disputes shall apply to such work.

(c) It is specifically agreed that no later agreement shall be deemed to have precedence over this Agreement unless signed by all Parties signatory hereto who are then currently employed or represented at the Project.

(d) Where a subject covered by the provisions of this Agreement is also covered by a Schedule A Agreement, the provisions of this Agreement shall apply. Where a subject is covered by a provision of a Schedule A Agreement and not covered by this Agreement, the provisions of the Schedule A Agreement shall prevail. Any dispute as to the applicable source between this Agreement and any Schedule A Agreement for determining the wages, hours of working conditions of employees on this Project shall be resolved under the procedures established in Article 10.

(e) It is understood that this Agreement, together with the referenced Schedule A Agreements, constitutes a self-contained, stand-alone agreement and by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local, area or national collective bargaining agreement as a condition of performing work within the scope of this Agreement. A Contractor may be required to sign a uniformly applied, non-discriminatory Participation or Subscription Agreement at the request of the trustees or administrator of a trust fund established pursuant to Section 302 of the Labor Management Relations Act, and to which such Contractor is bound to make contributions under this Agreement, provided that such Participation

Agreement does not purport to bind the Contractor beyond the terms and conditions of this Agreement and/or expand its obligation to make contributions beyond contributions based on Project Work performed. It shall be the responsibility of the Prime Contractor to have each of its subcontractors sign the documents described herein, with the appropriate craft Union prior to the subcontractor performing Project Work.

Section 2.8 Workers' Compensation Carve-out. The Parties recognize the potential that Project Work may provide for the implementation of a cost effective workers' compensation system, as permitted by revised California Labor Code Section 3201.5, and it is understood that the City is in an ongoing review of the value of such a program. Should the City request, the Union parties agree to meet and negotiate in good faith with representatives of the City for the development and subsequent implementation of an effective program involving improved and revised dispute resolution and medical care procedures for the delivery of workers' compensation benefits and medical coverage as permitted by the California Labor Code.

Section 2.9 Binding Signatories Only. This Agreement shall only be binding on the signatory Parties hereto, including Contractors through a Letter of Assent, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any entity not performing Project Work.

Section 2.9 Other City Work. This Agreement shall be limited to Project Work. Nothing contained herein shall be interpreted to prohibit, restrict, or interfere with the performance of any other operation, work or function not covered by this Agreement, which may be performed by City employees or contracted for by the City, on its property or in and around a Project Site.

Section 2.10 Separate Liability. It is understood that the liability of the Contractor(s) and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the City and/or any Contractor.

Section 2.11 Completed Project Work. As areas of Project Work are accepted by the City, this Agreement shall have no further force or effect on such items or areas except where the Prime Contractor is directed by the City or its representatives to engage in repairs, modification, check- out and/or warranties functions required by the Construction Contract.

ARTICLE 3

UNION RECOGNITION AND EMPLOYMENT

Section 3.1 Recognition. Contractors shall recognize the Council and the Unions as the sole and exclusive bargaining representative for the employees engaged in Project Work. Contractors shall further agree that the Unions shall be the primary source of all craft labor employed on the Projects. In the event that a Contractor has its own core workforce, the Contractor shall follow the procedures outlined below.

Section 3.2 Union Membership. No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of Project Work; provided, however, that any employee who is a member of the referring Union at the time of referral shall maintain that membership in good standing while employed under this Agreement. All employees shall, however, be

required to tender applicable monthly dues and any working dues, uniformly required to be paid by members to the appropriate Union on or before the eighth [8th] consecutive or cumulative day of employment on a Construction Contract. Unions will waive initiation fees for non-union workers employed temporarily on a Construction Contract, unless such waiver is prohibited by a Union's constitution, bylaws, or Schedule A Agreement.

Section 3.3 Contractor Selection of Employees. The Contractor shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdiction, and shall have the sole responsibility for selecting employees to be laid off, consistent with Section 3.4 and Section 4.2, below. The Contractor shall also have the right to reject any applicant referred by a Union for any reason; provided, however, that such right is exercised in good faith and not for the purpose of avoiding the Contractor's commitment to employ qualified workers through the procedures endorsed in this Agreement.

Section 3.4 Referral Procedures.

(a) For Unions now having a job referral system contained in a Schedule A Agreement, the Contractor agrees to comply with such system and it shall be used exclusively by such Contractor, except as modified by this Agreement. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations which require equal employment opportunities and non-discrimination. All of the foregoing hiring procedures, including related practices affecting apprenticeship, shall be operated so as to consider the goals of the City to employ Targeted Workers and to facilitate the ability of all Contractors to satisfy Targeted Hiring Policies.

(b) Recruitment. The Unions will exert their best efforts to recruit sufficient numbers of skilled craft workers to fulfill the labor requirements of the Contractor, including Targeted Hiring Policies and any other specific employment obligations to which the Contractor may be legally and/or contractually obligated; and to refer apprentices as requested to develop a larger, skilled workforce and satisfy such requirements. The Unions will work with their affiliated regional and national unions, and jointly with the PLA Administrator and others designated by the City, to identify and refer competent craft persons as needed for Project Work, and to identify and hire individuals, particularly Targeted Workers, for entrance into joint labor/management apprenticeship programs, or to participate in other identified programs and procedures to assist individuals in qualifying and becoming eligible for such apprenticeship programs, all maintained to increase the available supply of skilled craft personnel. The Union shall not knowingly refer an employee currently employed by a Contractor on Project Work to any other Contractor.

Section 3.5 Non-Discrimination in Referral, Employment, and Contracting. The Unions and Contractors agree that they will not discriminate against any employee or applicant for employment in hiring and dispatching on the basis of race, color, religion, sex, gender, national origin, age, membership in a labor organization, sexual orientation, political affiliation, marital status, disability, or any other basis prohibited by federal, state or local law.

Section 3.6 Employment of Targeted Workers.

(a) The Unions and Contractors agree that, to the extent allowed by law, and as long as they possess the requisite skills and qualifications, the Unions will exert their best efforts to refer and/or recruit sufficient numbers of skilled craft Targeted Workers as defined herein, to fulfill the requirements of the Contractors. In recognition of the fact that the City and the communities surrounding Project Work will be impacted by the construction of the Project Work, and to advance the City's and the federal governments' policy goals regarding providing economic opportunities to certain disadvantaged neighborhoods and individuals, the Parties agree to support satisfaction of the Targeted Hiring Policies. Towards that end, the Unions and Contractors shall exert their best efforts to encourage and provide referrals and utilization of Targeted Workers, prioritizing referrals and hiring decisions as indicated in the Targeted Hiring Policy.

(b) The Council agrees to support the operation of pre-apprentice referral programs in Fresno. This shall include, but not limited to, those individuals who have successfully completed Jumpstart, Fresno, Madera, Tulare, Kings Building and Construction Trades Council, Slingshot, and other programs identified by the Council and the City. Such individuals, however, must meet the qualifications and minimum requirements for the respective craft Union, or their respective apprenticeship or training programs, in order to be placed on the referral roles or placed into such apprenticeship or training programs. Such placement is subject to the individuals' compliance with Section 3.2, above.

(c) Each Contractor agrees to sign a Division of Apprenticeship Standards ("DAS") 7 form (attached as "Attachment C") to receive apprentices from an apprenticeship program affiliated with the Council.

Section 3.7 Reports.

The PLA Administrator shall prepare quarterly reports on apprentice utilization and the training and employment of Targeted Workers, and a schedule of Project Work and estimated number of craft workers needed. The City and Union shall review such reports and may agree upon additional or revised terms and/or procedures in order to attain the employment of Targeted Workers or other individuals identified in Section 3.6.

Section 3.8 Helmets to Hardhats.

(a) The City and the Unions wish to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The City and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties. For purposes of this Agreement the term "Eligible Veteran" shall have the same meaning as the term "veteran" as defined under Title 5, Section 2108(1) of the United States Code as it may be amended or re-codified from time to time. It shall be the responsibility of each qualified applicant to provide the Unions with proof of his/her status as an Eligible Veteran.

(b) The Unions and City agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for TCC Program Projects. To the extent

permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

Section 3.9 Requirements on Contractors.

To facilitate the dispatch of Targeted Workers and veterans, all Contractors will be required to utilize, and Unions shall accept and refer workers based on, the Craft Employee Request Form (Attached as "Attachment D") for the relevant component of the Project, whenever they are requesting the referral of any employee from a Union referral list for any Project Work. When Targeted Workers and veterans are requested by the Contractors, the Unions will refer such workers regardless of their place in the Unions' hiring hall list and normal referral procedures.

Section 3.10 Core Workers.

(a) Except as otherwise provided in separate collective bargaining agreement(s) to which the Contractor is signatory, Contractors may employ Core Workers as follows:

- For the Garage Expansion Component: Contractors may employ first a Core Worker, then an employee through a referral from the appropriate Union hiring hall, and so on alternating until a maximum of five (5) Core Workers are employed.
- For the Terminal Expansion Component: Contractors may employ first two Core Workers, then two employees through a referral from the appropriate Union hiring hall, followed by one additional Core Worker, and then one employee through a referral from an appropriate hiring hall, and so on alternating until a maximum of five (5) Core Workers are employed.

Thereafter, all additional employees in the affected trade or craft shall be requisitioned from the craft hiring hall in accordance with Section 3.3. The laying off of employees shall occur in reverse order of the above, assuming the remaining employees are qualified to undertake the work available. This provision applies only to Contractors not signatory to a current Schedule A Agreement, and is not intended to limit the transfer provisions of the Schedule A Agreement for signatory Contractors in any trade. As part of this process, and in order to facilitate the contract administration procedures, as well as appropriate fringe benefit fund coverage, all Contractors shall require their core employees and any other persons employed other than through the referral process, to register with the appropriate Union hiring hall, on or before the eighth (8th) day of consecutive or cumulative employment.

(b) Prior to any non-signatory Contractor performing any work on the Project, such Contractor shall provide a list of its Core Workers to the PLA Administrator and the Council. Failure of such a Contractor to do so will result in that Contractor being prohibited from using any Core Workers. Upon request by any Party to this Agreement, the Contractor hiring any Core Worker shall provide satisfactory proof (i.e., payroll records, quarterly tax records, driver's license, voter registration, postal address and such other documentation) evidencing the Core Worker's qualification as such to the PLA Administrator and the Council.

Section 3.11 Time for Referral. If any Union's registration and referral system does not fulfill the requirements for specific classifications requested by any Contractor (including requests for Targeted Workers) within forty-eight (48) hours (excluding Saturdays,

Sundays and holidays), that Contractor may use employment sources other than the Union registration and referral services, and may employ applicants meeting such standards from any other available source. The Contractors shall inform the Union of any applicants hired from other sources within forty-eight (48) hours of such applicant being hired, and such applicants shall register with the appropriate hiring hall, on or before the eighth [8th] day of consecutive or cumulative employment.

Section 3.12 Lack of Referral Procedure. If a Union does not have a job referral system as set forth in Section 3.4 above, Contractors shall give the Union equal opportunity to refer applicants. Contractors shall notify the Union of employees so hired, as set forth in Section 3.11.

Section 3.13 Individual Seniority. Except as provided in Section 4.3, individual seniority shall not be recognized or applied to employees working on the Project; provided, however, that group and/or classification seniority in a Union's Schedule A Agreement as of the effective date of this Agreement shall be recognized for purposes of layoffs.

Section 3.14 Foremen. The selection of craft foremen and/or general foremen shall be the responsibility of the Contractor. The number of craft foremen shall also be the responsibility of the Contractor unless otherwise provided for by the express terms of a Schedule A Agreement. All foremen shall take orders exclusively from the Contractor's designated representatives unless a General Foreman is on the Project in which case the General Foreman shall take orders exclusively from the Contractor's designated representatives. Craft foremen shall be designated as working foremen at the request of Contractors.

ARTICLE 4 UNION ACCESS AND STEWARDS

Section 4.1 Access to Project Sites Authorized representatives of the Union shall have access to Project Work sites, provided that they do not interfere with the work of employees and further provided that such representatives fully comply with posted visitor, security and safety rules.

Section 4.2 Stewards.

(a) Each Union shall have the right to appoint a working steward for each shift. There will be no non-working stewards. Written notification shall be given to the Contractor within twenty-four (24) hours after such assignment. Steward overtime shall be provided per the applicable Schedule A Agreement, provided the steward is qualified to perform the work available. Such designated steward shall not perform any supervisory functions. Stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

(b) In addition to their work as an employee, the steward has the right to receive, but not to solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward should be concerned only with the employees of the steward's Contractor and, if applicable, subcontractor(s), and not with the employees of any other Contractor. A Contractor will not discriminate against the steward in the proper performance of their Union duties.

(c) Where City personnel may be working in close proximity to the construction activities covered by this Agreement, the Union agrees that the Union representatives, stewards, and individual workers will not interfere with the City personnel, or with personnel employed by any other employer not a Party to this Agreement.

(d) Contractors agree to notify the appropriate Union twenty-four (24) hours before the layoff of a steward, except in the case of disciplinary discharge for just cause. If the steward is protected against such layoff by the provisions of the applicable Schedule A Agreement, such provisions shall be recognized when the steward possesses the necessary qualifications to perform the remaining work. In any case in which the steward is discharged or disciplined for just cause, the appropriate Union will be notified immediately by the Contractor, and such discharge or discipline shall not become final (subject to any later filed grievance) until twenty-four (24) hours after such notice has been given.

ARTICLE 5 WAGES AND BENEFITS

Section 5.1 Wages. All employees covered by this Agreement shall be classified in accordance with the work performed and paid by Contractors and the hourly wage rates for those classifications in compliance with the applicable Schedule A Agreement.

Section 5.2 Benefits.

(a) Contractors shall pay contributions to the established employee benefit funds in the amounts designated in the appropriate Schedule A Agreement and make all employee-authorized deductions in the amounts designated in the appropriate Schedule A Agreement. Notwithstanding Section 2.7(a), Contractors directly signatory to one or more of the Schedule A Agreements are required to make all contributions set forth in those Schedule A Agreements without reference to the foregoing.

(b) The Contractor shall agree to be bound by the written terms of the applicable, legally established, trust agreement(s) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds for its employees while performing Project Work. The Contractor authorizes the Parties to such trust funds to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.

Section 5.3 Wage Premiums Wage premiums, including but not limited to pay based on height of work, hazard pay, scaffold pay and special skills shall not be applicable to work under this Agreement, except to the extent provided for in any applicable Prevailing Wage Determination.

ARTICLE 6 HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 6.1 Hours of Work. Forty (40) hours per week shall constitute a regular week's work unless otherwise provided in the applicable Prevailing Wage Determination, or unless changes are permitted by law and are agreed upon by the Parties. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week, or a Monday through Friday standard work schedule.

Section 6.2 Place of Work. Employees shall be at their place of work (as designated by the Contractor) at the starting time and shall remain at their place of work and shall perform their assigned functions until quitting time. The place of work is defined as the gang, tool box, or equipment at the employee's assigned work location or the place where the foreman gives instructions. The Parties reaffirm their policy of a fair day's work for a fair day's wage. Except as provided in applicable Schedule A Agreements, there shall be no pay for time not worked unless the employee is otherwise engaged at the direction of the Contractor.

Section 6.3 Overtime. Overtime shall be paid in accordance with the requirements of the applicable Prevailing Wage Determination. There shall be no restriction on the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who will work overtime. There shall be no pyramiding of overtime (payment of more than one form of overtime compensation for the same hour) under any circumstances.

Section 6.4 Work Schedules. At the City's direction, because of operational necessities, a second shift may be scheduled without the preceding shift having been worked. It is recognized that the City's operations and/or mitigation obligations may require the restructuring of normal work schedules. Except in an emergency or when specified in the City's bid specification, the Contractor shall give affected Union(s) at least three (3) days' notice of such schedule changes.

Section 6.5 Holidays. Recognized holidays on this Project shall be those set forth and governed by the Prevailing Wage Determination(s) applicable to this Project.

Section 6.6 Meal Periods. The Contractor will schedule a meal period of no more than one-half hour duration at the work location at approximately mid-point of the schedule shift, provided, however, that the Contractor may, for efficiency of the operation, establish a schedule which coordinates the meal periods of two or more crafts. An employee may be required to work through their meal period because of an emergency or a threat to life or property, or for such other reasons as are identified in the applicable Schedule A Agreement. If they are so required, they shall be compensated in the manner established in the applicable Schedule A Agreement.

ARTICLE 7 WORK STOPPAGES AND LOCK-OUTS

Section 7.1 No Work Stoppages or Disruptive Activity. The Council and the Unions agree that neither they, nor their respective officers or agents or representatives, shall incite or encourage, condone or participate in any strike, sympathy strike, work stoppage, picketing, walk-out, hand-billing, or otherwise advising the public that a labor dispute exists, or a slowdown of any kind for any cause or dispute whatsoever with respect to or in any way related to Project Work, or which interferes with or otherwise disrupts Project Work, or with respect to or related to the City or Contractors or subcontractors, including, but not limited to, economic strikes, unfair labor practice strikes, safety strikes, sympathy strikes and jurisdictional strikes, whether or not the underlying dispute is arbitrable. Any such actions by the Council, or Unions, or their members, agents, representatives or the employees they represent shall constitute a violation of this Agreement. The Council and the Union shall take all reasonable means to prevent or terminate any such activity. No employee shall engage in any strike, sympathy strike, work stoppage, picketing, walk-out, hand-billing, or otherwise advising the public that a labor dispute exists, or a slowdown of any kind. Any employee who

participates in or encourages any activities which interfere with the normal operations of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire.

Section 7.2 Standing to Enforce. The City, the PLA Administrator, or any Contractor affected by an alleged violation of Section 7.1 shall have standing and the right to enforce the obligations established therein.

Section 7.3 Expiration of Schedule A Agreements. If a Schedule A Agreement expires during the term of this Agreement, it is specifically agreed that there shall be no strikes, sympathy strikes, work stoppages, picketing, walk-outs, hand-billing, or otherwise advising the public that a labor dispute exists, or slowdowns of any kind. The wages, benefits and terms of employment established and set under the initial Schedule A Agreement shall continue in full force and effect until the completion of the Project.

Section 7.4 No Lockouts. Contractors shall not cause, incite, encourage, condone or participate in any lock-out of employees with respect to Project Work during the term of this Agreement. The term "lock-out" refers only to a Contractor's exclusion of employees in order to secure collective bargaining advantage, and does not refer to the discharge, termination or layoff of employees by the Contractor for any reason in the exercise of rights pursuant to any provision of this Agreement, or any other agreement, nor does "lock-out" include the City's decision to stop, suspend or discontinue any Project Work or any portion thereof for any reason.

Section 7.5 Best Efforts to End Violations.

(a) If a Contractor contends that there is any violation of this Article or Section 8.3, it shall notify, in writing, the Executive Secretary of the Council, the Senior Executive of the involved Union(s) and the PLA Administrator. The Executive Secretary and the leadership of the involved Union(s) will immediately instruct, order and use their best efforts to cause the cessation of any violation of the relevant Article or section.

(b) If a Union contends that any Contractor has violated this Article, it will notify the Contractor and the PLA Administrator, setting forth the facts which the Union contends violate the Agreement, at least twenty-four (24) hours prior to invoking the procedures of Section 7.7. The PLA Administrator shall promptly order the involved Contractor(s) to cease any violation of the Article.

Section 7.6 Withholding of services for failure to pay wages and fringe benefits Notwithstanding any provision of this Agreement to the contrary, it shall not be a violation of this Agreement for any Union to withhold the services of its members from a particular Contractor who:

(a) fails to timely pay its weekly payroll; or

(b) fails to make timely payments to the Union's Joint Labor/Management Trust Funds in accordance with the provisions of the applicable Schedule A Agreements. Prior to withholding its members' services for the Contractor's failure to make timely payments to the Union's Joint Labor/Management Trust Funds, the Union shall give at least ten (10) days (unless a lesser period of time is provided in the Union's Schedule A Agreement, but, in no event, less than forty-eight (48) hours) written notice of such failure to pay by registered or certified mail, hand delivery, and by facsimile transmission to the

involved Contractor and to the City. The Union will meet within the ten (10) day period to attempt to resolve the dispute.

(c) Upon payment by the delinquent Contractor or General Contractor of all monies due and then owing for wages and/or fringe benefit contributions, the Union shall direct its members to return to work and the Contractor shall return all such members to work.

(d) Apart from the withholding of services, this section shall not authorize any Unions or its represented employees to engage in picketing or other concerted activities which would violate Section 7.1.

Section 7.7 Expedited Enforcement Procedure. Any party, including the City, Contractors or Unions, may institute the following procedures in lieu of, or in addition to, any other action at law or equity when a breach of Sections 7.1, 7.4, or 8.3 is alleged.

(a) Within ninety (90) days of the execution of this Agreement, the Parties shall agree on a permanent arbitrator and alternate arbitrators whose names shall then be set forth in Attachment F this Agreement. If the permanent arbitrator is unavailable at any time, the Party invoking this procedure shall notify one of the alternate arbitrators selected by the Parties, as set forth under section 10.2, Step 3 (a), in that order on an alternating basis. Expenses incurred in arbitration shall be borne equally by the Parties involved in the arbitration. The decision of the arbitrator shall be final and binding on the Parties, provided, however, that the arbitrator shall not have the authority to alter or amend or add to or delete from the provisions of this Agreement in any way. Notice to the arbitrator shall be by the most expeditious means available, with notices to the Parties alleged to be in violation, and to the Council if it is a Union alleged to be in violation. For purposes of this Article, written notice may be given by facsimile, hand delivery, or overnight mail and will be deemed effective upon receipt.

(b) The permanent arbitrator or the alternate shall hold a hearing within twenty-four (24) hours of receipt of said notice if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after notice has been dispatched to the Executive Secretary and the Senior Official(s) as required by Section 7.5 above.

(c) The arbitrator shall notify the Parties of the place and time chosen for this hearing. The hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed 24 hours unless otherwise agreed upon by all Parties. A failure of any Party or Parties to attend the hearing shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(d) The sole issue at the hearing shall be whether or not a violation of Sections 7.1, 7.3, 7.4 or 7.5, above, or Section 8.3 has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation, or mitigation of such violation or to award damages which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any Party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such award shall be served on all Parties by email, hand, or registered mail upon issuance.

(e) Such award shall be final and binding on all Parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to herein above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other Party. In any judicial proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 7.7(d) of this Article, all Parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any Party's right to participate in a hearing for a final order of enforcement. The Party or Parties first alleging the violation shall serve the court's order or orders enforcing the arbitrator's award on all Parties by hand, certified mail, or by overnight delivery to their address on file with the City (for a Union), as shown on their business contract for work under this Agreement (for a Contractor) and to the representing Union (for an employee).

(f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the Parties to whom they accrue.

(g) The fees and expenses of the arbitrator shall be equally divided between the Party or Parties initiating this procedure and the respondent Party or Parties.

ARTICLE 8

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

Section 8.1 Assignment of Work. Initial assignment of Project Work will be solely the responsibility of the Contractor performing the work involved, so long as such assignment is permissible within the established scopes of work set forth in Prevailing Wage Determinations. A Union may require reassignment of work in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan, through procedures set forth in this Article. However, in cases of such reassignment, total employee compensation (including wages and benefits) required shall be solely that required by the Prevailing Wage Determination applicable to the initial assignment, so long as such assignment was within a valid and established scope for the work in question under the Prevailing Wage Determinations.

Section 8.2 The Plan. All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Contractors parties to this Agreement shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions party to this Agreement.

(a) If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the Council within fourteen (14) days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

Section 8.3 No Work Disruption Over Jurisdiction. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any

nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 8.4 Pre-Job Conferences. As provided in Article 15, each Contractor will conduct a pre-job conference with the appropriate affected Union(s) prior to commencing work. The Council and the PLA Administrator shall be advised in advance of all such conferences and may participate if they wish.

Section 8.5 Resolution of Jurisdictional Disputes. If any actual or threatened strike, sympathy strike, work stoppage, picketing, hand-billing or otherwise advising the public that a labor dispute exists, or a slowdown of any kind on Project Work by reason of a jurisdictional dispute or disputes occurs, the Parties may utilize the expedited procedures set forth in the Plan, provided, however, that nothing in this section shall interfere with the right of the City or Contractors to enjoin activities prohibited in Section 7.1 using procedures set forth in Article 7.

ARTICLE 9 MANAGEMENT RIGHTS

Section 9.1 Contractor and City Rights. The Contractors and the City have the sole and exclusive right and authority to oversee and manage construction operations on Project Work without any limitations unless expressly limited by a specific provision of this Agreement. In addition to the following and other rights of the Contractors enumerated in this Agreement, the Contractors expressly reserve their management rights and all the rights conferred upon them by law. The Contractor's rights include, but are not limited to, the right to:

- (a) Plan, direct and control operations of all work; and
- (b) Hire, promote, transfer and layoff their own employees, respectively, as deemed appropriate to satisfy work and/or skill requirements; and
- (c) Promulgate and require all employees to observe reasonable job rules and security and safety regulations; and
- (d) Discharge, suspend or discipline their own employees for just cause; and
- (e) Utilize, in accordance with City approval, any work methods, procedures or techniques, and select, use and install any types or kinds of materials, apparatus or equipment, regardless of source of manufacture or construction; assign and schedule work at their discretion; and
- (f) Assign overtime, determine when it will be worked and the number and identity of employees engaged in such work, subject to such provisions in the applicable Schedule A Agreement(s) requiring such assignments be equalized or otherwise made in a nondiscriminatory manner.

Section 9.2 Specific City Rights. In addition to the following and other rights of the City enumerated in this Agreement, the City expressly reserves its management rights and all the rights conferred on it by law. The City's rights (and those of the PLA Administrator on its behalf) include, but are not limited to, the right to:

- (a) Inspect any construction site or facility to ensure that the Contractor follows the applicable safety and other work requirements;

(b) Require Contractors to establish a different work week or shift schedule for particular employees as required to meet the operational needs of the Project Work at a particular location;

(c) At its sole option, terminate, delay and/or suspend any and all portions of the covered work at any time; prohibit some or all work on certain days or during certain hours of the day to accommodate the ongoing operations of the City's facilities and/or to mitigate the effect of ongoing Project Work on businesses and residents in the neighborhood of the Project site; and/or require such other operational or schedule changes it deems necessary, in its sole judgment, to effectively maintain its primary mission and remain a good neighbor to those in the area of its facilities. (In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the PLA Administrator, and the affected Contractor(s) and Union(s) with reasonable notice of any changes it requires pursuant to this section;

(d) Approve any work methods, procedures and techniques used by Contractors whether or not these methods, procedures or techniques are part of industry practices or customs; and

(e) Investigate and process complaints, through the PLA Administrator, in the manner set forth in Articles 7 and 10.

Section 9.3 Use of Materials. There shall be no limitations or restriction by Union upon a Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and utilization, of equipment, machinery, packaging, precast, prefabricated, prefinished, or preassembled materials, tools or other labor saving devices, subject to the application of the State Public Contracts and Labor Codes as required by law in reference to offsite construction. Generally, the onsite installation or application of such items shall be performed by the craft having jurisdiction over such work.

Section 9.4 Special Equipment, Warranties, and Guaranties.

(a) It is recognized that certain equipment of a highly technical and specialized nature may be installed at Project Work sites. The nature of the equipment, together with the requirements for manufacturer's warranties, may dictate that it be prefabricated pre-piped and/or pre-wired and that it be installed under the supervision and direction of the City's and/or manufacturer's personnel. The Unions agree to install such equipment without incident.

(b) The Parties recognize that the Contractor will initiate from time to time the use of new technology, equipment, machinery, tools, and other labor-savings devices and methods of performing Project Work. The Unions agree that they will not restrict the implementation of such devices or work methods. The Unions will accept and will not refuse to handle, install or work with any standardized and/or catalogue parts, assemblies, accessories, prefabricated items, preassembled items, partially assembled items, or materials whatever their source of manufacture or construction.

(c) If there is any disagreement between the Contractor and the Unions concerning the methods of implementation or installation of any equipment, device or item, or method of work, or whether a particular part or pre-assembled item is a standardized or catalog part or item, the work will proceed as directed by the Contractor and the Parties shall immediately consult over the matter. If the disagreement is not

resolved, the affected Union(s) shall have the right to use the procedures set forth in Article 10.

Section 9.5 No Less Favorable Treatment The Unions agree that Project Work will not be treated less favorably than other work performed by the Unions.

ARTICLE 10 SETTLEMENT OF GRIEVANCES AND DISPUTES

Section 10.1 Cooperation and Harmony on Site.

(a) This Agreement is intended to establish and foster continued close cooperation between management and labor. The Council shall assign a representative to this Project for the purpose of assisting the Unions, and working with the City and Contractors, to complete the construction of the Project economically, efficiently, continuously and without any interruption, delays or work stoppages.

(b) The City, the Contractors, Unions, and employees collectively and individually recognize the importance to all Parties of maintaining continuous and uninterrupted performance of Project Work, and agree to resolve disputes in accordance with the grievance provisions set forth in this Article or, as appropriate, those of Article 7 or 8.

Section 10.2 Processing Grievances. Any questions arising out of and during the term of this Agreement that involve its interpretation and application, including applicable provisions of the Schedule A Agreements, but not jurisdictional disputes or alleged violations of Section 7.1 and 7.4 and similar provisions, shall be considered a grievance and subject to resolution under the following procedures.

Section 10.3 All Project disputes involving the application or interpretation of the Schedule A Agreement involving the parties' signatory hereto shall be resolved pursuant to the resolution procedures of that Schedule A Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article 7 (Work Stoppages and Lock Outs) and Article 8 (Work Assignments and Jurisdictional Disputes), shall be subject to resolution by the grievance and arbitration procedures set forth below.

Section 10.4 Employee Discipline. All disputes involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Schedule A Agreement for the craft of the affected employee.

Section 10.5 Notice Requirement. No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute, but, in no event, more than twenty (20) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual written agreement of the parties.

Section 10.6 Grievances. Grievances shall be settled according to the following procedures:

(a) Grievance Process.

Step 1: Within ten (10) business days after the receipt of the written notice of the grievance, the representative of the involved Local Union or District Council, or their designee, or the representative of the employee, and the representative of the involved Contractor, shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within five (5) business days of the Step 1 meeting, the grievance may be referred in writing by either Party involved to the Business Manager of the Union involved and the Labor Relations Manager of the Contractor or the Contractor's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The City and the Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not settled in Step 2, within seven (7) calendar days of the Step 2 meeting, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within seven (7) calendar days after referral of a dispute to Step 3, the representatives shall notify the permanent arbitrator, or if not available, the alternate, for final and binding arbitration. The parties agree that if the permanent arbitrator or their alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of alternate arbitrators set forth in Appendix H. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

(b) Binding Determination. The decision of the arbitrator shall be final and binding on all parties. The arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the arbitrator shall be borne equally by both parties. The arbitrator shall arrange for a hearing on the earliest available date from the date of their selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

(c) Time Limits and Scope. Failure of the grieving Party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented and shall not have the authority to change, amend, add to or detract from any of the provisions of this Agreement.

(d) No Precedent. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

(e) Replacement Arbitrators. Should any of the arbitrators listed in Appendix H no longer work as a labor arbitrator, the City and the Council shall mutually agree to a replacement.

(f) Limit on Use of Procedures. The procedures contained in this Article shall not be applicable to any alleged violation of Articles 7 or 8, with a single exception that any employee discharged for violation of Section 7.2 or Section 8.3, may resort to the

procedures of this Article to determine only if they were, in fact, engaged in such a violation.

(g) Notice. The PLA Administrator (and the City, in the case of any grievance regarding the Scope of this Agreement), shall be notified by the involved Contractor of all actions at Steps 2 and 3. Further, the PLA Administrator shall, upon its own request, be permitted to participate fully as a party in all proceedings at such steps.

ARTICLE 11 REGULATORY COMPLIANCE

Section 11.1 Compliance with All Laws. The Council and all Unions, Contractors, subcontractors, and their employees shall comply with all applicable federal and state laws, ordinances and regulations including, but not limited to, those relating to safety and health, employment and applications for employment. All employees shall comply with the safety regulations established by the City, the PLA Administrator or the Contractor. Employees must promptly report any injuries or accidents to a supervisor.

Section 11.2 Prevailing Wage Compliance. All Contractors shall comply with state laws and regulations on prevailing wages. Compliance with this obligation may be enforced by the appropriate parties through Article 10, or by pursuing the remedies available under state law through the Labor Commissioner or the Department of Industrial Relations.

Section 11.3 Violations of Law. Should there be a finding by a Court or administrative tribunal of competent jurisdiction that a Contractor has violated federal and/or state law or regulation, the City, upon notice to the Contractor that it or its subcontractors is in violation (including any finding of non-compliance with the California prevailing wage obligations as enforced pursuant to DIR regulations), the City may take any action permitted by law or contract to encourage the Contractor's compliance, including, but not limited to, assessing fines and penalties and/or removing the offending Contractor from Project Work.

ARTICLE 12 SAFETY AND PROTECTION OF PERSON AND PROPERTY

Section 12.1 Safety.

(a) It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the City or the Contractor. It is understood that all employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the City.

(b) Employees shall be bound by the safety, security and visitor rules established by the Contractor and/or the City. These rules will be published and posted. An employee's failure to satisfy his/her obligations under this section will subject him/her to discipline, up to and including discharge.

(c) California Public Contract Code Section 2500(a)(3) requires that any Project Labor Agreement include an agreed-upon protocol concerning drug testing for the workers who will be employed on the project. For the purposes of this Agreement, all Parties agree that the Joint Labor Management Substance Abuse Policy negotiated with the various General Contractor Associations and the Basic Trades' Unions (Joint Labor Management Substance Abuse Policy; International Union of Operating Engineers Local Union No. 3 (attached as "Attachment G")) shall be the policy and procedure utilized for work performed under this Agreement. In addition, the Parties shall comply with all applicable federal and state drug and alcohol testing requirements and prohibitions.

Section 12.2 Suspension of Work for Safety. A Contractor may suspend all or a portion of the Project Work to protect the life and safety of employees. In such cases, employees will be compensated only for the actual time worked, provided, however, that where the Contractor requests employees to remain at the site and be available for work, the employees will be compensated for stand-by time at their base hourly rate of pay.

Section 12.3 Water and Sanitary Facilities. The Contractor shall provide adequate supplies of drinking water and sanitary facilities for all employees as required by state law or regulation.

ARTICLE 13 TRAVEL AND SUBSISTENCE

Travel expenses, travel time, subsistence allowances, zone rates, and parking reimbursements shall be paid in accordance with the applicable Schedule A Agreement unless superseded by the applicable Prevailing Wage Determination.

ARTICLE 14 APPRENTICES

Section 14.1 Use of Apprentices.

(a) Apprentices used on Projects covered under this Agreement shall be registered in Joint Labor Management Apprenticeship Programs approved by the State of California. Apprentices may comprise up to thirty percent (30%) of each craft's workforce (calculated by hours worked) at any time, unless the standards of the applicable joint apprenticeship committee, confirmed by the DAS, establish a lower or higher maximum percentage. Where the standards permit a higher percentage, that percentage shall apply on Project Work. Where the applicable standards establish a lower percentage, the applicable Union will use its best efforts with the Joint Labor Management apprenticeship committee and, if necessary, the DAS, to permit up to thirty percent (30%) of the total hours worked to be performed by apprentices.

(b) The Unions agree to cooperate with the Contractor in referring apprentices as requested up to the maximum percentage. The apprentice ratio for each craft shall be in compliance, at a minimum, with the applicable provisions of the California Labor Code relating to utilization of apprentices. The City shall encourage such utilization both as to apprentices and the overall supply of experienced workers. The PLA Administrator will work with the Council to assure the appropriate utilization of apprentices and ensure that the Unions are meeting their obligation to maximize the use of apprentices consistent with this section.

(c) The Parties agree that apprentices will not be dispatched to Contractors working under this Agreement unless there is a journeyman working on the Project Site

where the apprentice is to be employed who is qualified to assist and oversee the apprentice's progress through the program in which he is participating.

(d) All apprentices shall work under the direct supervision of a journeyman from the trade in which the apprentice is indentured. A journeyman shall be defined as set forth in the California Code of Regulations, Title 8 [apprenticeship] section 205, which defines a journeyman as a person who has either completed an accredited apprenticeship in their craft, or has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeymen in the apprenticeable occupation. Should a question arise as to a journeyman's qualification under this subsection, the Contractor shall provide adequate proof evidencing the worker's qualification as a journeyman to the Council.

ARTICLE 15

PRE-JOB CONFERENCES

Each Contractor awarded a Construction Contract by the City for Project Work shall conduct a Pre-Job conference with the appropriate affected Union(s) prior to commencing work. All Contractors who have been awarded contracts by the Prime Contractor shall attend the Pre-Job conference. The Council and the PLA Administrator shall be advised in advance of all such conferences and may participate if they wish. All work assignments shall be disclosed by the Prime Contractor and all Contractors at the Pre-Job conference in accordance with industry practice. Should there be any formal jurisdictional dispute raised under Article 8, the PLA Administrator shall be promptly notified. The Prime Contractor shall have available at the Pre-Job conference the plans and drawing for the work to be performed on the Project.

ARTICLE 16

LABOR/MANAGEMENT COOPERATION

Section 16.1 Joint Committee. The Parties to this Agreement may establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of two (2) representatives selected by the City and two (2) representatives selected by the Council to monitor compliance with the terms and conditions of this Agreement and to recommend amendments to this Agreement, with the exception of the dollar threshold specified in Section 2.2(a) and the term of this Agreement under Section 20.1, when doing so would be to the mutual benefit of the Parties. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. A quorum will consist of at least one (1) representative selected by the City and at least one (1) representative selected by the Council.

Section 16.2 Functions of Joint Committee. The Committee shall meet only at the call of either of the joint chairs, to discuss the administration of the Agreement, the progress of the Project, general labor management problems that may arise, and any other matters consistent with this Agreement. Substantive grievances or disputes arising under Articles 7, 8 or 10 shall not be reviewed or discussed by this Committee, but shall be processed pursuant to the provisions of the appropriate Article. The PLA Administrator shall be responsible for the scheduling of the meetings, the preparation of the agenda topics for the meetings, with input from the Unions the Contractors and the City. Notice of the date, time and place of meetings, shall be given to the Committee members at least three (3) days prior to the meeting.

ARTICLE 17 SAVINGS AND SEPARABILITY

Section 17.1 In the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. To the extent possible under such circumstances, the parties shall substitute, by mutual agreement, in place and stead of the invalidated article, provision, clause, sentence or word, another article, provision, clause, sentence or word that will resolve the issues identified by the court and be in accordance with the intent and purpose of the article, provision, clause, sentence or word invalidated. The City Manager shall be authorized to agree to appropriate modifications on behalf of the City.

Section 17.2 If the Parties are unable to reach an agreement, then the entire Agreement shall be null and void and the Council and Unions will no longer be bound by the provisions of Article 7 (Work Stoppages and Lock Outs).

ARTICLE 18 WAIVER

A waiver of or a failure to assert any provisions of this Agreement by any or all of the Parties hereto shall not constitute a waiver of such provision for the future. Any such waiver shall not constitute a modification of the Agreement or change in the terms and conditions of the Agreement and shall not relieve, excuse or release any of the Parties from any of their rights, duties, or obligations hereunder.

ARTICLE 19 AMENDMENTS AND AMBIGUITY

(a) It is understood that the list of Projects to be covered by this Agreement has not been finalized prior to the execution of this Agreement. Accordingly, upon the request of either party, this agreement may be reopened. The parties agree to reopen this Agreement for the purpose of negotiating additional provisions or modifications to existing provisions to effectuate the purpose of the Agreement and the intent of the parties.

(b) The parties further agree that the requirements set forth in Section 3.6 are of critical importance. To achieve the goals set forth in Article 3, the parties agree that further refinement of Section 3.6 may be necessary and appropriate. Accordingly, upon the request of either party, Article 3 may be reopened to assure the achievement of its requirements and/or to maximize its effectiveness.

(c) The provisions of this Agreement can be amended only by mutual agreement in writing between the City and the Council. All Contractors and other Parties shall be deemed to consent to application of such amendment with regard to subsequent Project Work. In the event of any conflict or ambiguity between this Agreement and any Attachment or exhibit, the provisions of this Agreement shall govern. The Fresno City Manager shall be authorized to agree to revisions to this Agreement on behalf of the City.

ARTICLE 20 EFFECTIVENESS AND DURATION OF THE AGREEMENT

Section 20.1 Duration.

(a) This Agreement shall be effective from the date signed by all Parties, including all Unions listed in signature lines below, and shall remain in effect until completion of construction of all Project Work.

(b) Notwithstanding any other provision of this Agreement, if construction design plans developed through the Design-Build Contracts are utilized by the City for construction through a separate procurement process unrelated to the Design-Build Contract, this Agreement may apply to such construction and procurement process only by written mutual consent of the City and the signatory Unions, with any modifications to which all Parties agree.

Section 20.2 Turnover and Final Acceptance of Completed Work.

(a) Construction of any phase, portion, section, or segment of Project Work shall be deemed complete when such phase, portion, section or segment has been turned over to the City by the Contractor and the City has accepted such phase, portion, section, or segment. As areas and systems of the Project are inspected and construction-tested and/or approved and accepted by the City or third parties with the approval of the City, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the City to engage and repairs or modifications required by its contract(s) with the City.

(b) The Notice of Completion received by the Contractor will be provided to the Council with the description of what portion, segment, etc., has been accepted. Final acceptance may be subject to a "punch" list, and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the City and Notice of Completion is issued by the City or its representative to the Contractor. At the request of the Union, complete information describing any "punch" list work, as well as any additional work required of a Contractor at the direction of the City pursuant to (a) above, involving otherwise turned-over and completed facilities which have been accepted by the City, will be available from the PLA Administrator.

IN WITNESS whereof the Parties have caused this Project Labor Agreement to be executed as of the date and year above stated.

CITY OF FRESNO,
A California municipal corporation

FRESNO, MADERA, TULARE, KINGS
BUILDING & CONSTRUCTION TRADES
COUNCIL

By: _____

By:  _____


Name: _____

Name: Charles Rojas

Title: _____

Title: Financial Treasurer/Secretary FMTK **BTE**
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  6/24/19
Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Deputy Date

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS

ATTACHMENT A

ATTACHMENT A
LETTER OF ASSENT

To be signed by all contractors awarded Project Work, as defined in the City of Fresno Project Labor Agreement Covering Construction of the Fresno Yosemite International Airport Expansion Project.

[Contractor's Letterhead]

Attn: _____

PLA Administrator

City of Fresno

[address]

Re: Project Labor Agreement Covering Construction of the Fresno Yosemite International Airport Expansion Project - Letter of Assent

Dear PLA Administrator:

This is to confirm that [name of company] agrees to be party to and bound by the City of Fresno Project Labor Agreement Covering Construction of the Fresno Yosemite International Airport Expansion Project, effective _____, 2019, as such Agreement may, from time to time, be amended by the negotiating parties or interpreted pursuant to its terms. Such obligation to be a party and bound by this Agreement shall extend to all work covered by the agreement undertaken by this Company on the project and this Company shall require all of its contractors and subcontractors of whatever tier to be similarly bound for all work within the scope of the Agreement by signing and furnishing to you an identical letter of assent prior to their commencement of work.

Sincerely.

[Name of Construction Company]

By: _____

Name and Title of Authorized Executive

[Copies of this letter must be submitted to the PLA Administrator and to the Council]

ATTACHMENT B

Side Letters to the Project Labor Agreement Covering Construction of the Fresno Yosemite International Airport Expansion Project

- Sheet Metal Workers Local 104
- UA Local 246

Side Letter to the Project Labor Agreement Covering Construction of the Fresno Yosemite International Airport Expansion Project

Sheet Metal Workers Local 104

This letter will confirm our understanding arising from the above-referenced Project Labor Agreement (PLA) and clarifies the application of section 2.4(c) of the Agreement. Notwithstanding Section 2.4(c), the parties agree that fabrication work normally performed by Sheet Metal Workers Local 104 members under Article ___ of Sheet Metal Workers Local 104's Collective Bargaining Agreement, if performed off-site and covered by the off-site provisions of that agreement, will be performed pursuant to terms of Sheet Metal Workers Local 104's Collective Bargaining Agreement. However, nothing in this letter shall be construed to require the Airport to provide any local preference in the selection of employees or contractors in violation of the Federal procurement requirements applicable to the implementation of the Project and the performance of Project Work.

Sheet Metal Workers Local 104 recognizes that the timely completion of this project at or below its budgeted cost is vital to the Airport and the community it is intended to serve. Therefore, if the nature of the work or the Project schedule requires the use of prefabricated materials that would otherwise be covered by the off-site provisions of Sheet Metal Workers Local 104's Collective Bargaining Agreement, the Airport Director or the Contractor shall notify Sheet Metal Workers Local 104 of the anticipated issue. Sheet Metal Workers Local 104 agrees to make good faith efforts to address the issue. The Airport, its Director and Sheet Metal Workers Local 104 agree to discuss such circumstances affecting the Project and, where accommodations are sought, the reasons necessary to depart from the master agreement. Sheet Metal Workers Local 104 will not unreasonably withhold consent to such accommodations. Should a dispute arise related to this side letter or the application of section 2.4(c) at the work site, Sheet Metal Workers Local 104 and agrees to install on-site any components pre-fabricated materials without delay, but may utilize the expedited grievance to seek resolution of the issue.

City of Fresno: _____

By: _____

Title: _____

Date: _____

Sheet Metal Local 104: _____

By: _____

Title: _____

Date: _____

Side Letter to the Project Labor Agreement Covering Construction of the Fresno Yosemite International Airport Expansion Project

UA Local 246

This letter will confirm our understanding arising from the above-referenced Project Labor Agreement (PLA) and clarifies the application of section 2.4(c) of the Agreement. Notwithstanding Section 2.4(c), the parties agree that fabrication work normally performed by UA Local 246 members under Article ___ of UA Local 246's Collective Bargaining Agreement, if performed off-site and covered by the off-site provisions of that agreement, will be performed pursuant to terms of UA Local 246 Collective Bargaining Agreement. However, nothing in this letter shall be construed to require the Airport to provide any local preference in the selection of employees or contractors in violation of the Federal procurement requirements applicable to the implementation of the Project and the performance of Project Work.

UA Local 246 recognizes that the timely completion of this project at or below its budgeted cost is vital to the Airport and the community it is intended to serve. Therefore, if the nature of the work or the Project schedule requires the use of prefabricated materials that would otherwise be covered by the off-site provisions of UA Local 246 Collective Bargaining Agreement, the Airport Director or the Contractor shall notify UA Local 246 of the anticipated issue. UA Local 246 agrees to make good faith efforts to address the issue. The Airport, its Director and UA Local 246 agree to discuss such circumstances affecting the Project and, where accommodations are sought, the reasons necessary to depart from the master agreement. UA Local 246 will not unreasonably withhold consent to such accommodations. Should a dispute arise related to this side letter or the application of section 2.4(c) at the work site, UA Local 246 and agrees to install on-site any components pre-fabricated materials without delay, but may utilize the expedited grievance to seek resolution of the issue.

City of Fresno: _____

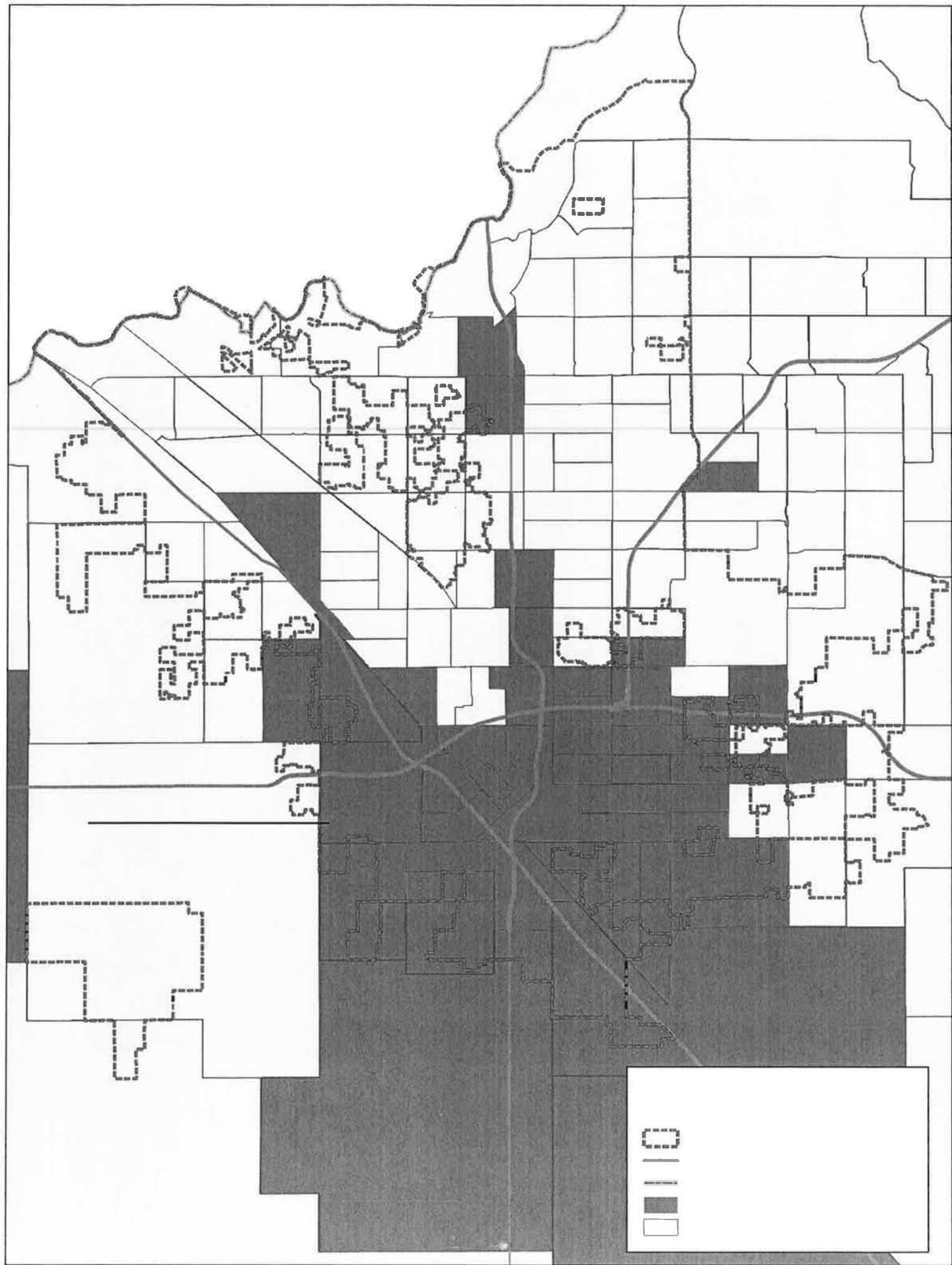
By: _____

Title: _____

Date: _____

UA Local 246: _____

By: _____



ATTACHMENT C

AGREEMENT TO TRAIN APPRENTICES

District No. _____

DAS File No _____

| | | | | | |
|---|---------------------|------|-------|----------|------------------|
| NAME OF EMPLOYER | | | | | |
| MAILING ADDRESS | (STREET AND NUMBER) | CITY | STATE | ZIP CODE | TELEPHONE NUMBER |
| ADDRESS OF TRAINING LOCATION (IF DIFFERENT) | | | | | |
| OCCUPATION(S) | | | | | O*Net Code |
| NAME OF APPRENTICESHIP COMMITTEE AND STANDARDS | | | | | |
| AREA COVERED BY APPRENTICESHIP STANDARDS or NAME AND ADDRESS OF PROJECT | | | | | |

THE OFFICIAL, whose signature follows, agrees on behalf of the above named employer to train apprentices in the designated occupation in accordance with the apprenticeship standards and apprentice agreement and to comply with the provisions thereof.

[SIGNED] By _____

Printed name _____

Title _____ Date _____

THE APPRENTICESHIP COMMITTEE accepts and approves the employer as qualified to train apprentices under its standards in the designated occupation.

Effective until:

| | |
|---|--|
| [SIGNED] By _____ Printed Name _____ | Revoked |
| Title _____ | End of Project (Enter project Name and address in Area covered above) |
| | Date _____ Date |
| | Other _____ Specify |
| | |

Accepted:

DIVISION OF APPRENTICESHIP STANDARDS



Specify

EFFECTIVE DATE

[SIGNED] By _____ Date _____
Apprenticeship Consultant

REMARKS:

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS

DAS 7 (REV 11/09)

ATTACHMENT D

CRAFT EMPLOYEE REQUEST FORMS

- Parking Garage Expansion Component
- Terminal Expansion Component

CRAFT EMPLOYEE REQUEST FORM

Fresno Yosemite International Airport Expansion Project Parking Garage Expansion Component

TO THE CONTRACTOR: Please complete and fax this form to the applicable union to request craft workers that fulfill the requirements of the Targeted Hiring Policy for this project. After faxing your request, please call the Local to verify receipt and substantiate their capacity to furnish workers as specified below. Please print your Fax Transmission Verification Reports and keep copies for your records.

The City of Fresno Project Labor Agreement Covering Construction of the Parking Garage Expansion Component of the Fresno Yosemite International Airport Expansion Project establishes requirements for hiring Targeted Workers in several categories, as follows:

| | |
|--|---|
| <u>Disadvantaged Worker</u> – 10% of journey level hours | A qualified individual who is a resident of Fresno County and which meets one or more of the following barriers to employment: (1) is a veteran or the eligible spouse of a veteran of the United States Armed Forces; (2) exited the foster care system within the previous five years; (3) formerly incarcerated; (4) is a current recipient of governmental assistance benefits; and (5) is a custodial single parent. |
| <u>Local Resident</u> – 30% of journey level hours | Tier 1 Local Residents and Tier 2 Local Residents. |
| <u>New Apprentice</u> – 40% of apprentice hours | A Local Resident who first enrolled in a state-registered apprenticeship program at time of commencement of Project Work, or within 12 months prior to commencement of project work. |
| <u>Tier 1 Local Resident</u> | A person residing in the City of Fresno and in the top 5% of disadvantaged communities per CalEnviroScreen 2.0. (See attached map.) |
| <u>Tier 2 Local Resident</u> | A person residing in Fresno County or Madera County and in the top 5% of disadvantaged communities per CalEnviroScreen 2.0. (See attached map.) |

TO THE UNION: Please complete the "Union Use Only" section on the next page and fax this form back to the requesting Contractor. Be sure to retain a copy of this form for your records.

CONTRACTOR USE ONLY

To Union Local # _____ Fax# _____

Date: _____ Cc: PLA Administrator

From: Company: _____ Contact Phone : _____

Issued By _____ Contact Fax: _____

PLEASE PROVIDE ME WITH THE FOLLOWING UNION CRAFT WORKERS.

| Craft Classification (i.e., plumber, painter, etc.) | Journeyman or Apprentice | Targeted Worker (specify categories) | Number of workers needed | Report Date | Report Time |
|--|-----------------------------|--|-----------------------------------|-------------|-------------|
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL WORKERS REQUESTED = _____ | | | | | |

Please have worker(s) report to the following work address indicated below :

Project Name: _____ Site: _____ Address: _____ Report to :
_____ On-site Tel: _____ On-site Fax: _____ Comment or Special
Instructions: _____

UNION USE ONLY

| |
|--------------------------------------|
| Date dispatch request received: |
| Dispatch received by: |
| Classification of worker requested: |
| Classification of worker dispatched: |

WORKER REFERRED

| |
|--|
| Name: |
| Date worker was dispatched: |
| Is the worker referred a: (check all that apply) |

| | | |
|--|--------|--------|
| JOURNEYMAN | Yes -- | No - - |
| APPRENTICE | Yes -- | No - - |
| DISADVANTAGED WORKER | Yes -- | No - - |
| NEW APPRENTICE | Yes -- | No - - |
| LOCAL RESIDENT | Yes -- | No - - |
| VETERAN | Yes -- | No- - |
| GENERAL DISPATCH FROM OUT OF WORK LIST | Yes -- | No - - |

CRAFT EMPLOYEE REQUEST FORM

Fresno Yosemite International Airport Expansion Project Terminal Expansion Component

TO THE CONTRACTOR: Please complete and fax this form to the applicable union to request craft workers that fulfill the requirements of the Targeted Hiring Policy for this project. After faxing your request, please call the Local to verify receipt and substantiate their capacity to furnish workers as specified below. Please print your Fax Transmission Verification Reports and keep copies for your records.

The City of Fresno Project Labor Agreement Covering Construction of the Terminal Expansion Component Fresno Yosemite International Airport Expansion Project establishes requirements for hiring Targeted Workers in two categories, as follows, in order to assure compliance with goals for utilization of minorities and women as required by U.S. Executive Order 11246:

| |
|--|
| <u>Women – 6.9% goal</u> |
| <u>Minorities – 26.1%</u> |
| <u>Other Targeted Workers per final</u> <u>Targeted Hiring Policy established</u> <u>by the City: %</u> |

TO THE UNION: Please complete the “Union Use Only” section on the next page and fax this form back to the requesting Contractor. Be sure to retain a copy of this form for your records.

CONTRACTOR USE ONLY

To Union Local # _____ Fax# _____

Date: _____ Cc: PLA Administrator

From: Company: _____ Contact Phone : _____

Issued By _____ Contact Fax: _____

PLEASE PROVIDE ME WITH THE FOLLOWING UNION CRAFT WORKERS.

| Craft Classification (i.e., plumber, painter, etc.) | Journeyman or Apprentice | Targeted Worker (specify needed categories) | Number of workers needed | Report Date | Report Time |
|--|-----------------------------|--|-----------------------------------|-------------|-------------|
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL WORKERS REQUESTED = _____ | | | | | |

Please have worker(s) report to the following work address indicated below :

Project Name: _____ Site: _____ Address: _____ Report to :
_____ On-site Tel: _____ On-site Fax: _____ Comment or Special
Instructions: _____

UNION USE ONLY

| |
|--------------------------------------|
| Date dispatch request received: |
| Dispatch received by: |
| Classification of worker requested: |
| Classification of worker dispatched: |

WORKER REFERRED

| |
|--|
| Name: |
| Date worker was dispatched: |
| Is the worker referred a: (check all that apply) |

| | | |
|--|--------|-------|
| JOURNEYMAN | Yes -- | No -- |
| APPRENTICE | Yes -- | No -- |
| MINORITY WORKER (per federal guidelines) | Yes -- | No -- |
| FEMALE WORKER (per federal guidelines) | Yes -- | No -- |
| Other Targeted Worker | Yes -- | No -- |
| VETERAN | Yes -- | No-- |
| GENERAL DISPATCH FROM OUT OF WORK LIST | Yes -- | No -- |

ATTACHMENT E

Side Letter re Competitiveness in Subcontract Awards

[CITY LETTERHEAD]

[DATE]

Chuck Riojas
Secretary-Treasurer
Fresno, Madera, Tulare, Kings Building Trades Council
5410 E. Home Ave
Fresno, CA 93721

re: *Project Labor Agreement for Fresno Yosemite International Airport Expansion Project*

Dear Mr. Riojas:

This letter is incorporated into and amends the Project Labor Agreement for the Fresno Yosemite International Airport Expansion Project (the "Project"), entered into between the Fresno, Madera, Tulare, and Kings Building and Construction Trades Council, the labor organizations signatory thereto, and the City of Fresno (the "PLA").

Because of the specialized nature of certain aspects of construction of the Terminal Expansion Component of the Project, and because of the unusual importance of cost control and efficiency in Project financing and construction, the parties have agreed to the provisions set forth in this letter to ensure competitiveness in Project subcontract awards. Certain capitalized terms below are defined in the PLA.

If in initial efforts to award subcontracts on the Terminal Expansion Component, the Prime Contractor receives fewer than three bids from Qualified Contractors for a particular scope of work, and any received bids for that scope exceed the pre-bid estimate by at least 10%, then the Prime Contractor may initiate the following process, with the City's approval:

- i. Initial Re-Bid Process. The scope of work in question may be re-bid. In such case, the Prime Contractor shall provide notice to the Council that it is going to re-bid the scope of work, with a due date no less than ten days from notification and availability of bid documents to the Council. The Council and Unions may encourage additional contractors to submit bids. The Prime Contractor shall provide bid specifications and any other information required for bid submission to the Council promptly upon request.
- ii. Secondary Re-Bid Process. If after the Initial Re-Bid Process there are still fewer than three Qualified Contractors submitting bids for one or more of the subcontracts in question, and any received bids for that scope exceed the pre-bid estimate by at least 10%, then the Prime Contractor may again re-bid the scope of work without application of the PLA, and award the subcontract for that scope accordingly. Work performed under such subcontracts shall not be considered "Project Work."
- iii. During the Initial Re-bid Process, Developer and the Prime Contractor may negotiate an alternate approach to ensure competitiveness in subcontracting, at their mutual discretion.

Subcontracts awarded outside Project Work pursuant to section (ii) above shall comprise no more than 5% of the dollar value of construction work on the Terminal Expansion Component. For purposes of the above process, the term "Qualified Contractor" means a licensed, financially qualified contractor with experience in the type of work required and is capable of meeting the job schedule, which has submitted a commercially reasonable bid, is bondable, carries appropriate insurance, including Workers' Compensation insurance (or participates in a State recognized Workers' Compensation Alternative Dispute Resolution ("ADR") Program), and is otherwise capable of satisfying all requirements of the bid specifications.

All parties will work cooperatively to foster a competitive bidding environment for all subcontracts and scopes of work, in hopes of receiving competitively-priced bids so as to avoid utilization of the above process. The above process is a backstop to address the unusual complexity and specialization of many of the scopes of work required for construction of the Project.

This letter shall apply to the PLA for the duration of its term. If you agree to terms of this letter, please indicate your acceptance in the space provided below.

It is so agreed,

[City signature block]

[Council signature block]

ATTACHMENT F

List of Arbitrators

1. Grievances between Unions and Contractors:

Designated Arbitrators

Permanent Arbitrator: 1. _____

Alternate Arbitrators: 1. _____

2. _____

3. _____

4. _____

2. Grievances between Unions and City:

Designated Arbitrators

Permanent Arbitrator: 1. _____

Alternate Arbitrators: 1. _____

2. _____

3. _____

4. _____

ATTACHMENT G

ADDENDUM "C" JOINT LABOR MANAGEMENT SUBSTANCE ABUSE POLICY

I. INTRODUCTION

The Union and the Employer establish this Policy in order to provide the Individual Employer with a comprehensive substance abuse program, to provide Employees who abuse and/or are addicted to drugs, including alcohol, a means to receive treatment for their abuse and/or addiction, and to provide for a safe workplace. An Individual Employer is not obligated by this Agreement to have a substance abuse policy. Implementation of this Policy is not mandatory by any Individual Employer, but this Policy is the only policy the Individual Employer may implement for Employees. Once implemented, the Policy shall remain in effect unless otherwise agreed to by the Union and the Individual Employer.

An Individual Employer which is regulated by the United States Department of Transportation ("DOT") Code of Federal Regulation CFR 382 and 49 may elect not to implement the testing provisions of this Policy for its Employees who are not regulated by DOT.

II. NOTICE

A. An Individual Employer must give written notice to the Union that it is implementing this Policy. The notice must be delivered in person, by certified mail or by FAX before it implements the Policy. A DOT regulated Individual Employer shall specifically notify the Union whether it is implementing the testing provisions of this Policy for its Employees who are not subject to DOT regulations. The notice shall be delivered to the Union at the following address:

Operating Engineers Local Union No. 3 1620 South Loop Road
Alameda, CA94502 (FAX: [510] 748-7401)

B. The Individual Employer may not implement this Policy unless it subjects all management and supervisory employees to the same type of testing which is provided herein.

C. An Individual Employer who has implemented this Policy shall advise the Union dispatchers with whom it places an order for Employees that it intends to drug test dispatched Employees. A test result shall not be set aside because an Individual Employer does not give such notice.

D. An Individual Employer who implements this Policy shall provide written notice of this Policy to all Employees including those dispatched to it by the Union and shall provide each Employee with a copy of the Policy.

E. Failure to give a form of notice, as set forth in this section shall make any drug testing engaged in by the Individual Employer a violation of the Schedule A Agreement and no results of any such test shall be relied upon to deny employment or pay or to discipline any Employee.

III. PURPOSE OF POLICY

A. The Individual Employer and the Union are committed to providing a safe and productive work environment for Employees. The Employer, Individual Employer and the Union recognize the valuable resource we have in our Employees and recognize that the state of an Employee's health affects attitude, effort, and job performance. The parties recognize that substance abuse is a behavioral, medical and social problem that causes decreased efficiency and increased risk of accidents and of injury.

The Individual Employer and the Union therefore adopts this Policy. The intent of the Policy is threefold:

1. To maintain a safe, drug and alcohol free workplace;
2. To maintain our work force at its maximum effectiveness; and

3. To provide confidential referral to the Addiction Recovery Program ("ARP") and to provide confidential treatment to those Employees who recognize they have a substance abuse problem and voluntarily seek treatment for it.

B. In order to achieve these purposes, it is our primary goal to identify those Employees and refer them to professional counseling, and treatment *before* job performance has become a disciplinary problem. Employees are urged to use the services available through ARP. ARP will assist them and refer them to the appropriate treatment program.

1. Treatment for substance abuse and chemical dependency is provided under the Health and Welfare Plan, up to the limits described in the plans.

2. An Employee shall be granted necessary leave of absence for treatment ARP recommends contingent upon signing a return-to-work agreement as provided for in Section XI.

IV. EDUCATION PROGRAM

The Individual Employer will implement a comprehensive drug awareness and education program which shall be in conformance with the DOT regulations. The program shall include educating Employees and management/supervisory personnel about substance abuse and chemical dependency, the adverse effect they have on Employees and the Individual Employer, and the treatment available to Employees who abuse substances and/or are chemically dependent, and the penalties that may be imposed upon Employees who violate this Policy. The Individual Employer shall consult with ARP before it implements this policy so that ARP can provide education to the Individual Employer and its Employees. ARP shall continue to provide an educational program for the Individual Employer for their Employees and shall, to the maximum extent possible, train the Employees of Individual Employer who implement this Policy.

V. CONFIDENTIALITY

The Individual Employer will abide by all applicable State and Federal laws and regulations regarding confidentiality of medical records in any matter related to this Policy. The Individual Employer shall designate one of its management, supervisory or confidential employees to be its custodian of records and contact person for all matters related to this Policy. All such records shall be kept in a locked file which shall be labeled "confidential." Employee records related to this Policy shall not be kept in the Employee's personnel file.

All information from an Employee's drug and alcohol test is confidential for purposes other than determining whether this Policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the Employee. The results of a positive drug test shall not be released until the results are confirmed. Every effort will be made to insure that all Employee issues related to this Policy will be discussed in private and actions taken will not be made known to anyone other than those directly involved in taking the action, or who are required to be involved in the disciplinary procedure.

VI. TESTING

Testing for the presence of alcohol or controlled substances and/or their by-products in one's body may only be performed under the conditions set forth herein. All testing shall be done in accordance with the standards established by the Substance Abuse and Mental Health Services Administration ("SAMHSA"), any successor agency, or any other agency of the federal government which has responsibility for establishing standards for drug testing. All such agencies shall be collectively referred to as "SAMHSA."

Chain of Custody. All SAMHSA standards for Chain of Custody will be adhered to. A specimen for which the SAMHSA standards are not complied with shall not be considered for any purpose under this Policy.

Laboratories. All laboratories which perform tests under this Policy shall be SAMHSA certified.

Testing Procedures and Protocols. All SAMHSA standards for testing standards and protocols shall be followed. All specimens which are determined to be positive by the SAMHSA approved screening test shall be subject to a SAMHSA certified confirmatory test (gas chromatography/mass spectrometry).

Second Test. The laboratory shall save a sufficient portion of each specimen in a manner approved by SAMHSA so that an Employee may have a second test performed. Immediately after the specimen is collected, it will be labeled and then initialed by the Employee and a witness. If the sample must be collected at a site other than the drug and/or alcohol testing laboratory, the specimen shall then be placed in a transportation container. The container shall be sealed in the Employee's presence and the Employee shall be asked to initial or sign the container. The container shall be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method. Any Employee whose specimen is tested positive and who challenges a test result may have the second portion of the sample tested at his/her expense and at a laboratory agreed upon by the Employee and the MRO so long as that laboratory is SAMHSA certified and has been or is approved by the parties and the Employee requests the second test within seventy-two (72) hours of notice of a positive result. If the second test is negative, the Employee will be considered to have been tested negative.

Cut-Off Levels. SAMHSA standards for cut-off levels will be complied with when applicable. The cut-off levels for both the screening and confirmatory tests shall be per Federal standards as determined by the U. S. Department of Health and Human Services ("DHHS"). Only tests which are positive pursuant to the SAMHSA standards shall be reported to the Medical Review Officer as positive. A .04 blood/alcohol level or above shall be considered to be positive.

Medico/ Review Officer. A Medical Review Officer ("MRO") shall verify all positive test results. The MRO must be a licensed physician. The MRO shall be a member of the American Society of Addictive Medicine ("ASAM") if available. If no ASAM members are available, the MRO shall be certified by the Medical Review Officers' Certification Council. The Union shall approve all MRO's. Upon verification of a positive test result, the MRO shall refer the affected Employee to ARP for assessment and referral to treatment, if appropriate.

Consent Form. Any Employee directed to submit to a test in accordance with this Policy will sign a consent and release form, a copy of which is attached hereto (Form "A"). The consent and release form will only authorize (1) the facility where the specimen is collected to collect the specimen, (2) the laboratory which performs the test to perform the test and to provide the results to the MRO, and, if negative, to the Individual Employer, and (3) the MRO to verify tests and report to the Individual Employer whether the test is positive or negative. The consent and release form shall notify the Employee that he/she may have a Union representative present if available.

The Employee may be disciplined if he/she refuses to sign the authorization if the Individual Employer has advised the Employee (1) he/she must sign it or he/she will be disciplined up to and including termination, (2) the release is limited as provided herein, (3) the Employee has a right to consult with a Union representative before signing the release and before submitting to the test. An Employee who believes the Individual Employer is improperly directing him/her to submit to a test may file a grievance under the Schedule A Agreement. The test results will be disregarded if the Board of Adjustment or Arbitrator determines the Individual Employer was not authorized by this Policy to direct the Employee to submit to the test.

Substances to be Tested For. A specimen may be tested for alcohol, cannabinoids (THC), barbiturates, opiates, cocaine, phencyclidines (PCP), amphetamines, and methaqualone or the by-products of these substances. A specimen shall not be tested for anything else. If DOT revises its list of substances for which it requires Individual Employer to test, this Section will be revised to include those substances. The laboratory will report positive test results to the MRO. The MRO will verify whether the test is positive or negative. The MRO shall report to the Individual Employer whether the Employee tested positive or negative for one of these substances. The MRO will not identify the substance(s) for which the Employee tested positive unless specifically required to do so by DOT regulations.

Urine, Blood, or Breath Test. The Individual Employer may direct the Employee to submit to a urine test or at the Employee's request, a blood test for alcohol and/or other drugs, or a breath test for alcohol. An Employee who is unable to provide a urine sample within one (1) hour of being directed to do so, will submit to a blood test.

Notification to Employer of Test Results. The laboratory shall report negative test results to the Individual Employer. The laboratory will report positive test results to the MRO. The MRO will verify whether the test was positive or negative and will report the final results to the Individual Employer.

VII. TYPES OF PERMISSIVE TESTING

A. TIME OF DISPATCH TESTING

An Individual Employer may require an Employee to be tested for the presence in the Employee's body of one of the drugs or by-products thereof set forth above at the time the Employee is dispatched (on one of the first three (3) days of employment). It must test all Employees at the time they are dispatched if it tests any Employee. The Individual Employer shall put the Employee to work or pay the Employee pending the test results unless the Employee has been dispatched to a DOT regulated assignment and the Individual Employer does not have any work for the Employee to perform which is not subject to the DOT regulations or if it has probable cause to believe the Employee is impaired, intoxicated, or under the influence of a drug. The standards for probable cause are set forth below in Section B. If the Individual Employer does not allow an Employee to work pending the test results because it believes it has probable cause, it shall make the Employee whole for all lost wages and benefits if the Employee tests negative. Employees who test positive will be referred to ARP. The Individual Employer shall not be obligated to employ any such Employee after ARP releases the Employee to return to work but may employ such Employee under the terms of a return-to-work agreement. An Employee who refuses to submit to a drug/alcohol test when dispatched shall not be paid show-up time.

An Individual Employer may test Employees who are recalled from layoff as provided for in the Job Placement Regulations who have not worked for thirty (30) days. If the Individual Employer tests any Employee who is recalled, it must test all such Employees. An Individual Employer may test all Employees at the time they are dispatched under this Section except for those who are recalled.

Time of Dispatch Screening by the Job Placement Center: The parties shall establish a joint committee to determine whether there is a feasible means by which the Job Placement Centers can conduct the drug/alcohol screen before dispatching an Employee so that only Employees with a negative test will be referred.

B. PROBABLE CAUSE TESTING

An Individual Employer may require an Employee to submit to a drug test as provided for in this Policy if it has probable cause that the Employee is impaired, intoxicated, and/or under the influence of a drug. Probable cause must be based on a trained Management Representative's (preferably not in the bargaining unit) objective observations and must be based upon abnormal coordination, appearance, behavior, absenteeism, speech or odor. The indicators shall be recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol and shall be indicators not reasonably explained as resulting from causes other than the use of such controlled substance and/or alcohol (such as, but not by way of limitation, fatigue, lack of sleep, side effects of proper use of prescription drugs, reaction to noxious fumes or smoke, etc.). Probable cause may not be established, and thus not a basis for testing, if it is based solely on the observations and reports of third parties. The trained Management Representative's observations and conclusions must be confirmed by another trained Management Representative. The grounds for probable cause must be documented by the use of an Incident Report Form (see Form "B" attached). The Management Representative shall give the Employee a completed copy of this Incident Report Form and shall give the Union Representative, if present, a copy of the Incident Report Form before the Employee is required to be tested. After being given a copy of the Incident Report Form, the Employee shall be allowed enough time to read the entire document and to understand the reasons for the test.

The Management Representative also shall provide the Employee with an opportunity to give an explanation of his/her condition, such as reaction to a prescribed drug, fatigue, lack of sleep, exposure to noxious fumes, reaction to over-the-counter medication or illness. If available, the Union Representative shall be present during such explanation and shall be entitled to confer with the Employee before the explanation is required. If the Management Representative(s), after observing the Employee, and hearing any explanation, concludes that there is in fact probable cause to believe that the Employee is under the influence of or impaired by, drugs or alcohol, the Employee may be ordered to submit to a drug test.

The Individual Employer shall advise the Employee of his/her right to consult with a Union Representative (including a Steward) and allow the Employee to consult with a Union Representative before the Employee submits to the test, if the Union Representative is available.

Employees required to submit to a test under Section B will be paid for all time related to the test including the time the Employee is transported to and from the collection site, all time spent at the collection site, and all time involved completing the consent and release form if the test results are negative.

C. ACCIDENT TESTING

An Individual Employer shall require Employees who are directly, or indirectly, involved in work-related accidents involving property damage or bodily injury that requires medical care or work-related accidents which would likely result in property damage or bodily injury be subject to a test as provided herein. The innocent victims of an accident will not be subject to a test unless probable cause exists. The Individual Employer shall complete an Incident Report Form (see Form B attached) whenever it tests an Employee under this Section.

D. UNANNOUNCED RANDOM TESTING

An Individual Employer may initiate unannounced random testing, a selection process where affected Employees are selected for testing and each Employee has an equal chance of being selected for testing. If an Individual Employer initiates such testing, all Employees shall be subjected to such testing. The Individual Employer may establish two random testing pools; one for DOT regulated Employees and one for all others. An Individual Employer who initiates

random testing shall specifically state in its notice to the Union and its notice to Employees that Employees will be subject to random testing. The Individual Employer shall give thirty (30) days' notice to the Union and Employees prior to implementing a random drug testing program.

E. DOT REGULATED EMPLOYEES

Notwithstanding any other provision of this Policy, the Individual Employer may require its Employees who are covered by the DOT drug and alcohol testing regulations to submit to testing as required by those regulations. Such testing will be conducted in strict accordance with the Regulations. The Individual Employer may discipline an Employee who tests positive as defined by the Regulations subject to Section XI, REHABILITATION/DISCIPLINE, of the Policy. ARP shall be the Substance Abuse Professional for all Employees. ARP, to the maximum extent possible, shall provide the mandated training to all Employees. Employees who are subject to DOT regulations who have a positive "pre-employment" test (as defined by the DOT regulations) will be paid show-up time only if the Individual Employer does not have any work for the Employee to perform which is not subject to the DOT regulations pending the test result. Employees who are tested under the DOT Regulations who are not allowed by those Regulations to continue to perform safety sensitive functions, as defined by the Regulations, shall be paid for hours worked.

F. OWNER/AWARDING AGENCY REQUIREMENTS

Whenever owner or awarding agency specifications require the Individual Employer to provide a drug-free workplace, the Union and the Employer or the Individual Employer shall incorporate such additional requirements herein. This Policy shall apply to all such testing.

G. QUICK TESTS

The parties agree to allow the Employers to use, on an individual basis, an oral or urine quick test approved by the bargaining parties as an effective low-cost tool for substance abuse screening for pre-hire, time of dispatch screening only. Testing procedures for the oral test (including the oral screen - OSR device) and the urine test shall be conducted in a manner consistent with the product manufacturer's specifications; in an effort to produce the most consistent and accurate results possible. Dispatched members who fail this saliva or urine test will be sent for standard urine testing. When the Individual Employer conducts the oral screen, a negative result may be accepted and the applicant may be put to work with no further testing required. A non-negative (inconclusive) result will subject the applicant to the Standard Procedures in this Agreement.

VIII. EMPLOYER REFERRALS

A decline in an Employee's job performance is often the first sign of a personal problem which may include substance abuse or chemical dependency. Supervisory personnel will be trained to identify signs of substance abuse, chemical dependency, and declining job performance. The Individual Employer may formally refer an Employee to ARP based upon documented declining job performance or other observations prior to testing under Section VII and/or disciplining the Employee.

IX. EMPLOYEE VOLUNTARY SELF-HELP PROGRAM

An Employee who has a chemical dependency and/or abuses drugs and/or alcohol is encouraged to participate in an Employee Voluntary Self-Help Program. Any such Employee shall be referred to ARP. Employees who seek voluntary assistance for alcohol and/or substance abuse may not be disciplined for seeking such assistance. Request by Employees for such assistance shall remain confidential and shall not be revealed to other Employees or management personnel without the Employee's consent. ARP shall not disclose information on

drug/alcohol use received from an Employee for any purpose or under any circumstances, unless specifically authorized in writing by the Employee.

The Individual Employer shall offer an Employee affected by alcohol or drug dependence an unpaid medical Leave of Absence for the purpose of enrolling and participating in a drug or alcohol rehabilitation program.

X. PROHIBITED ACTIVITIES/DISCIPLINE

An Employee shall not possess, use, provide, dispense, receive, sell, offer to sell, or manufacture alcohol and/or any controlled substances as defined by law or have any measurable amount of any such substance or by-product thereof as defined in Section VI while on the Individual Employer's property or jobsite and/or while working for the Individual Employer unless the Employee has the Individual Employer's express permission to do so. An Employee shall not work while impaired, intoxicated, or under the influence of alcohol and/or any controlled substance. An Employee who uses medication prescribed by a physician will not violate these rules by using such medication as prescribed if the Employee's physician has released the Employee to work. An Employee who uses over-the-counter medication in accordance with the manufacturer's and/or doctor's recommendation shall not violate the rules by using such medication. Impairment caused by prescribed medication and/or over-the-counter medication does not constitute a violation. The Individual Employer may prohibit an Employee who is impaired as a result of proper use of prescription or over-the-counter medication from working while the Employee is impaired but may not discipline such an Employee. An Employee who is impaired by misuse of prescription or over-the-counter medication violates the Policy and is subject to discipline as provided herein.

XI. REHABILITATION/DISCIPLINE

The Individual Employer may discipline an Employee who violates any provision of Section X. Such Employee is subject to disciplinary action up to and including termination. Among the factors to be considered in determining the appropriate disciplinary response are the nature and requirements of the Employee's work, length of employment, current job performance, the specific results of the test, and the history of past discipline.

The Individual Employer is not required to refer to ARP any Employee who violates any provision of Section X which prohibits the sale of, attempted sale of or manufacture of prohibited substances before it disciplines the Employee. The Individual Employer may not discipline any Employee who violates any other provisions of Section X until such Employee has been offered an opportunity to receive treatment and/or counseling.

Any Employee who fails to come forward to receive treatment and/or counseling prior to an accident, drug screen, for cause or random test shall not be eligible for the reemployment provisions of this Section XI.

Any Employee who comes forward to receive treatment and/or counseling prior to an accident, drug screen, for cause or random test shall be subject to reemployment as follows. The Employee will not be discharged if he/she agrees in writing to undergo the counseling/treatment ARP prescribes. The Individual Employer shall re-employ the Employee when ARP releases him/her to return to work if it has work available. It will not be required to lay off any current Employee in order to re-employ the Employee. If it does not have any work available when ARP releases the Employee, it shall re-employ the Employee as soon as it has work available. The Employee will be subject to a return-to-work agreement. The Individual Employer, the Union, and the Employee will enter into a return-to-work agreement. The return-to-work agreement will require the Employee to comply with and complete all treatment ARP,

or the treatment provider, as the case may be, determines is appropriate. It will also provide a monitoring of the Employee's compliance with the treatment plan ARP, or the treatment provider, develops and will allow the Individual Employer to require the Employee to submit to unannounced testing. The Individual Employer may discipline the Employee for not complying with the return-to-work agreement. A positive test on an unannounced test will be considered a violation of the return-to-work agreement. Any unannounced testing shall be performed in accordance with this Policy. The Union and the Individual Employer will attempt to meet with any Employee who violates the return-to-work agreement and attempt to persuade the Employee to comply with the return-to-work agreement. This procedure shall be followed on a consistent basis. Employees who are working under a return-to-work agreement shall be subject to all of the Individual Employer's rules to the same extent as all other Employees are required to comply with them.

The parties agree to establish a Substance Abuse Testing Procedures Committee who shall be empowered to periodically review and update testing procedures. Either party may request a meeting under this section and such meeting shall be convened within thirty (30) days.

The Substance Abuse Procedures Committee composed of Jim Murray, Steve Clark, Jack Estill, Tim Conway, Mark Breslin, Carl Goff, Russ Burns, Mark Reynosa and Byron Loney.

XII. NON-DISCRIMINATION

The Individual Employer shall not discriminate against any Employee who is receiving treatment for substance abuse and/or chemical dependency. All Employees who participate in ARP and/or are undergoing or have undergone treatment and rehabilitation pursuant to this Policy shall be subject to the same rules, working conditions, and discipline procedures in effect for all Employees. Employees cannot escape discipline for future infractions by participating in ARP and/or undergoing treatment and rehabilitation.

XIII. COST OF PROGRAM

Evaluation and treatment for substance abuse and chemical addiction are provided for through the Health and Welfare Plan. An Individual Employer who adopts this Policy will not incur any additional cost for assessment, referral and treatment beyond that which is incorporated into its Health and Welfare contribution rate. ARP is

funded through the Health and Welfare Trust to provide its current level of service which includes performing assessments of Employees and their covered dependents, referral of Employees and covered dependents who are undergoing rehabilitation and providing limited education and training programs to Individual Employer. The Individual Employer will pay all costs for testing.

XIV. GRIEVANCE PROCEDURE

All disputes concerning the interpretation or application of this Policy shall be subject to the grievance and arbitration procedures of the Schedule A Agreement.

XV. SAVINGS CLAUSE

The establishment or operation of this Policy shall not curtail any right of any Employee found in any law, rule, or regulation. Should any part of this Policy be determined contrary to law, such invalidation of that part or portion of this Policy shall not invalidate the remaining portions. In the event of such determination, the collective bargaining parties will immediately bargain in good faith in an attempt to agree upon a provision in place of the invalidated portion.

ATTACHEMENT E

DRAFT TARGETED HIRING POLICY

Owner's Targeted Hiring Policy for the Parking Garage Expansion component of the Fresno Yosemite International Airport Expansion Project aims to target employment and training opportunities to disadvantaged neighborhoods and workers in the local community.

The Design-Build Contractor and all subcontractors shall implement and comply with the Targeted Hiring Policy for this project. In addition, the Project Labor Agreement for the project contains specified steps by which applicable trade unions will facilitate contractor compliance with the Targeted Hiring Policy.

I. Definitions (for purposes of Targeted Hiring Policy only)

| | |
|-----------------------|---|
| Construction Trade | A construction trade classification as established for prevailing wage payment requirements by the California Department of Industrial Relations. |
| | |
| Contractor | A contractor of any tier that employs individuals to perform Project Work. |
| Local Resident | Tier 1 Local Residents and Tier 2 Local Residents. |
| Percentage Goals | The goals indicated for employment of Local Residents and Disadvantaged Workers described in the "Percentage Goals" section below. |
| | |
| <u>Project</u> Work | Construction work performed pursuant to the Design-Build Contract for the Parking Garage Expansion. |
| Disadvantaged Worker | A qualified individual who is a resident of Fresno County and who meets one or more of the following barriers to employment: (1) is a veteran or the eligible spouse of a veteran of the United States Armed Forces; (2) exited the foster care system within the previous five years; (3) formerly incarcerated; (4) is a current recipient of governmental assistance benefits; and (5) is a custodial single parent. |
| | |
| New <u>Apprentice</u> | A Local Resident who first enrolled in a state-registered apprenticeship program at time of commencement of Project Work, or within 12 months prior to commencement of project work. |

| | |
|-----------------------|---|
| Tier 1 Local Resident | A person residing in the City of Fresno and in the top 5% of disadvantaged communities per CalEnviroScreen 2.0. (See attached map.) |
| | |
| Tier 2 Local Resident | A person residing in Fresno County or Madera County and in the top 5% of disadvantaged communities per CalEnviroScreen 2.0. (See attached map.) |
| | |

11. Percentage Goals

Owner has established the following goals for each Contractor, for performance of Project Work in each Construction Trade:

a) For journey-level workers:

- at least 30% of Project Work hours shall be performed by Local Residents;
- at least 10% of Project Work hours shall be performed by Disadvantaged Workers.
- Hours worked by an individual who is both a Local Resident and a Disadvantaged Worker may be credited toward satisfaction of both percentage goals.

b) For apprentice-level workers:

- At least 40% of Project Work hours performed by apprentices shall be performed by New Apprentices, with first priority in hiring decisions to Tier 1 Local Residents, and second priority to Tier 2 local residents.
- The City is considering additional hiring goals for apprentices with less than 15% of the required graduating apprenticeship hours

111. Contractor Hiring Responsibilities

Each Contractors shall follow the following hiring processes in making a good faith effort to satisfy each of the Percentage Goals. Making good faith efforts requires a Contractor to follow the following hiring process. The Project Labor Agreement will contain relevant provisions regarding core worker hiring and union hiring hall commitments.

Assignment of existing crew members:

Union-Signatory Contractors: Contractor shall assign any existing crew members that fit the Percentage Goal categories, until Percentage Goals are satisfied. (If Contractor cannot satisfy Percentage Goals through assignment of existing crew members, then Contractor shall use union hiring hall referral system described below for any workers needed to hit goals.)

Non-union Contractors: For first _ hires: abide by the core worker restrictions and _/_ alternating hiring process described in Project Labor Agreement. When assigning existing crew members to the job as core workers as per Project Labor Agreement, Contractor shall prioritize assignment of crew members that fit Percentage Goal categories. For hiring hall positions within the _/_ alternating hiring process, Contractor and union hiring hall shall use the referral system described below.

Union Hiring Hall Referrals:

When a Contractor requests workers from the union hiring hall, it uses the craft request form attached to the Project Labor Agreement, indicating any categories of workers needed to satisfy the Percentage Goals. (If Contractor has already met the percentage goals at time of request, it instead makes a general request to the union hiring hall.)

When union hiring hall receives a craft request form indicating a needed category of worker, it refers a worker in that category, regardless of place on the hiring hall list.

If the union hiring hall has not sent sufficient workers in the requested category within two business days, the Contractor must request a worker in that category from other sources designated by Owner, including local pre-apprenticeship programs. Such sources include Jumpstart; the Fresno, Madera, Tulare, Kings Building and Construction Trades Council, Slingshot, and others.

Apprentice hires:

Same as journey-level process, except Contractors shall contact the relevant apprenticeship program or hiring hall, and request referral of New Apprentices as needed to satisfy the applicable Percentage Goal, and shall sponsor New Apprentices as needed. If necessary, Contractors shall contact local pre-apprenticeship programs as indicated by Owner to identify New Residents to sponsor and employ. Such sources include Jumpstart; the Fresno, Madera, Tulare, Kings Building and Construction Trades Council, Slingshot, and others. Contact to such programs shall include a specific request for workers ready to be sponsored to become New Apprentices.

IV. Miscellaneous

11. Monitoring. Contractors shall provide information as requested by Owner or its designee, and access to job sites and employees as requested, to enable determination of compliance with requirements of the Targeted Hiring Policy.
12. Subcontracts. Design-Build Contractor shall include compliance with the Targeted Hiring Policy as a material term of all subcontracts. Design-Build Contractor is liable for any breach of this policy by any subcontractor of any tier.
13. Assurance Regarding Preexisting Contracts. Each Contractor warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the project that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If, despite this assurance, an entity that has agreed to comply with this Policy has entered into such contract, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.
14. Liquidated Damages. If a Contractor fails to demonstrate that it made good faith efforts as described above, and it fell short of the Percentage Goals, then the Contractor shall owe to Owner as liquidated damages an amount equal to the minimum journeyman level wage (or apprentice-level wage, as applicable) under the prevailing wage classification for the Construction Trade in question, for each hour short of the Percentage Goals. Compliance and liquidated damages will be assessed on an annual basis, or upon final invoicing for any contract. Liquidated damages may be withheld from progress payments or final payment from Owner, upon compliance determination by Owner.
15. Out-of-State Workers. The Targeted Hiring Policy does not apply to Project Work hours performed by residents of states other than the State of California (and such hours shall not be considered Project Work Hours for purposes of determining satisfaction of the Percentage Goals).

ATTACHEMENT F

CITY OF FRESNO CONFLICT OF INTEREST DECLARATION

DISCLOSURE OF CONFLICT OF INTEREST

PARKING STRUCTURE AT FRESNO INTERNATIONAL AIRPORT

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

Explanation: _____

Signature

(name)

(company)

(address)

☐ Additional page(s) attached.

(city state zip)

ATTACHEMENT G

STATEMENT OF QUALIFICATIONS ACKNOWLEDGEMENT

Proposer's Name _____

The undersigned acknowledges receipt of the Request for Qualifications Statements for Parking Structure at Fresno Yosemite International Airport.

Print Name

Title

Company

Date _____

ATTACHEMENT H
DRAFT CONTRACT AGREEMENT



FRESNO YOSEMITE
INTERNATIONAL AIRPORT

**Draft STANDARD FORM OF
GENERAL CONDITIONS OF
CONTRACT
BETWEEN OWNER AND
DESIGN-BUILDER**

Document No. 535

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

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

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

INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition)

General Instructions

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

Specific Instructions

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

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

TABLE OF CONTENTS

| Article | Name | Page |
|----------------|---|-------------|
| Article 1 | General..... | 1 |
| Article 2 | Design-Builder's Services and Responsibilities..... | 2 |
| Article 3 | Owner's Services and Responsibilities..... | 6 |
| Article 4 | Hazardous Conditions and Differing Site Conditions..... | 8 |
| Article 5 | Insurance and Bonds | 9 |
| Article 6 | Payment | 11 |
| Article 7 | Indemnification | 13 |
| Article 8 | Time | 15 |
| Article 9 | Changes to the Contract Price and Time | 15 |
| Article 10 | Contract Adjustments and Disputes | 17 |
| Article 11 | Stop Work and Termination for Cause | 19 |
| Article 12 | Electronic Data | 21 |
| Article 13 | Miscellaneous..... | 22 |

Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

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

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

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

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

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

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

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

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

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

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

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

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

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

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

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

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

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of

the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.2 Design Professional Services.

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

2.3 Standard of Care for Design Professional Services.

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

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. 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 Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided

to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 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 in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

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

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

2.5 Legal Requirements.

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

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

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-

Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. 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.

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

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash 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.

2.8 Design-Builder's Responsibility for Project Safety.

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

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

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

their performance of the Work.

2.9 Design-Builder's Warranty.

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

2.10 Correction of Defective Work.

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

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

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

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

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

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

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

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

3.2.1.4 A legal description of the Site;

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

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

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

3.3 Financial Information.

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

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

3.4 Owner's Representative.

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

3.5 Government Approvals and Permits.

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

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

3.6 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

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

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

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for

whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

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

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

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

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

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

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

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

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

6.2 Monthly Progress Payments.

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

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

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

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described 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.

6.3 Withholding of Payments.

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

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

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

6.6 Substantial Completion.

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

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

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

6.7 Final Payment.

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

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

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or

unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

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

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

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

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

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

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process

or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

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

7.2 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for

whose acts any of them may be liable.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

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

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

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

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

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

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

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

9.2 Work Change Directives.

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

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

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

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

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

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

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

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

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice

Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

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

10.2 Dispute Avoidance and Resolution.

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

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

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration

Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

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

10.5 CONSEQUENTIAL DAMAGES.

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

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

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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

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

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

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

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

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

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

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

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

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

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request

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

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

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

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

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

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

Article 13

Miscellaneous

13.1 Confidential Information.

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

13.2 Assignment.

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

13.3 Successorship.

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

13.4 Governing Law.

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

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

13.8 Notice.

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

13.9 Amendments.

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



FRESNO YOSEMITE
INTERNATIONAL AIRPORT

**Draft STANDARD FORM OF
GENERAL CONDITIONS OF
CONTRACT
BETWEEN OWNER AND
DESIGN-BUILDER**

Document No. 535

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

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

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

INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition)

General Instructions

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

Specific Instructions

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

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

TABLE OF CONTENTS

| Article | Name | Page |
|----------------|---|-------------|
| Article 1 | General..... | 1 |
| Article 2 | Design-Builder's Services and Responsibilities..... | 2 |
| Article 3 | Owner's Services and Responsibilities..... | 6 |
| Article 4 | Hazardous Conditions and Differing Site Conditions..... | 8 |
| Article 5 | Insurance and Bonds | 9 |
| Article 6 | Payment | 11 |
| Article 7 | Indemnification | 13 |
| Article 8 | Time | 15 |
| Article 9 | Changes to the Contract Price and Time | 15 |
| Article 10 | Contract Adjustments and Disputes | 17 |
| Article 11 | Stop Work and Termination for Cause | 19 |
| Article 12 | Electronic Data | 21 |
| Article 13 | Miscellaneous..... | 22 |

Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

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

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

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

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

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

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

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

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

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

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

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

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

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

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

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

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

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of

the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.2 Design Professional Services.

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

2.3 Standard of Care for Design Professional Services.

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

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. 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 Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided

to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 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 in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

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

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

2.5 Legal Requirements.

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

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

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-

Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. 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.

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

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash 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.

2.8 Design-Builder's Responsibility for Project Safety.

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

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

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

their performance of the Work.

2.9 Design-Builder's Warranty.

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

2.10 Correction of Defective Work.

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

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

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

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

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

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

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

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

3.2.1.4 A legal description of the Site;

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

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

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

3.3 Financial Information.

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

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

3.4 Owner's Representative.

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

3.5 Government Approvals and Permits.

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

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

3.6 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

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

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

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for

whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

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

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

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

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

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

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

Article 6

Payment

6.1 Schedule of Values.

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

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

6.2 Monthly Progress Payments.

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

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

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

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described 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.

6.3 Withholding of Payments.

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

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay

Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

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

6.6 Substantial Completion.

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

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

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

6.7 Final Payment.

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

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

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or

unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

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

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

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

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

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

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process

or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

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

7.2 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for

whose acts any of them may be liable.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

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

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

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

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

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

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

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

9.2 Work Change Directives.

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

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

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

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

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

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

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

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

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice

Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

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

10.2 Dispute Avoidance and Resolution.

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

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

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration

Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

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

10.5 CONSEQUENTIAL DAMAGES.

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

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

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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

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

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

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

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

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

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

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

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

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

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request

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

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

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

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

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

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

Article 13

Miscellaneous

13.1 Confidential Information.

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

13.2 Assignment.

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

13.3 Successorship.

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

13.4 Governing Law.

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

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

13.8 Notice.

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

13.9 Amendments.

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

ATTACHMENT I
QUESTION FORM



FRESNO YOSEMITE

INTERNATIONAL AIRPORT

FRESNO YOSEMITE INTERNATIONAL AIRPORT

TELEPHONE # (559) 621-4521

FAX # (559) 251-4825

QUESTIONS FOR PROGRESSIVE DESIGN BUILD
REQUEST FOR QUALIFICATIONS STATEMENT
PARKING STRUCTURE

ATTENTION: Jean Runnels, Capital Development Specialist

(FOR AIRPORTS USE ONLY)

QUESTION No: _____

DATE: ____ REVIEWED BY: ____

RESPONSIBLE FOR RESPONSE:

☐ CITY

☐ CONSULTANT

FROM:

COMPANY: _____

CONTACT PERSON: _____

DATE: _____

PHONE No: _____

FAX No: _____

QUESTION: _____

ANSWER: _____

RESPONSE BY: _____

INCLUDED IN ADDENDUM NO. _____

DATE: _____

DATE: _____

Duplicate as Necessary, one sheet per question.

ATTACHMENT J

FEDERAL PROVISIONS APPLICABLE TO ALL AGREEMENTS

A. GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. CIVIL RIGHTS ACT OF 1964, TITLE VI

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

E. FEDERAL FAIR LABOR STANDARDS ACT (MINIMUM WAGE)

All contracts and subcontracts resulting from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

ATTACHMENT K
PHASE ONE INSURANCE REQUIREMENTS

ATTACHMENT K

INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno ("CITY")
and [Consultant Name] ("CONSULTANT")
REQUEST FOR AUALIFICATIONS ROGRESSIVE DESIGN-BUILD
PROCUREMENT FOR
PARKING STRUCTURE AT FRESNO
YOSEMITE INTERNATIONAL AIRPORT**

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT's profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

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

\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions):
 - (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

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

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY's Risk Manager or designee. At the option of the CITY's Risk Manager or designee, either:

- ⓪ The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or
- Ⓢ CONSULTANT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents, and volunteers.

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

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

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

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

The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

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

VERIFICATION OF COVERAGE

USER shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, USER shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

INDEMNIFICATION To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.