

DESIGN-BUILD GENERAL CONDITIONS FOR HUMBOLDT TRANSIT AUTHORITY HYDROGEN REFUELING STATION PROJECT 23-01

ARTICLE I. INTRODUCTORY PROVISIONS.

Section 1.01 Defined Terms. Wherever used in the Contract Documents, a term with initial capitalization, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified Articles, Sections, the titles of other documents or forms, proper nouns, and terms that are commonly used with initial capitalization.

Acceleration Costs -- The increased costs incurred by the Design-Builder (that is, costs over and above what the Design-Builder would otherwise have incurred) which are directly attributable to increasing the performance level of the Work at the direction of HTA, in an attempt to complete necessary segments of the Work earlier than otherwise anticipated or to avoid schedule delays,, such as for additional construction equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected Material, Equipment, or crew movement necessary for re-sequencing in connection with acceleration efforts.

Addenda -- Written or graphic instruments issued prior to the opening of Proposals which clarify, correct, or change the RFP requirements or the proposed Contract Documents.

Affiliate -- Any Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Design-Builder. An Affiliate may also be any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by the Design-Builder. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

Agreement—The written instrument, executed by HTA and Design-Builder that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer of Record and/or Designer of Record, and designates the specific items that are Contract Documents.

Approval or Approve— A written determination by HTA that a particular Design-Builder submittal, plan, program, invoice, or action appears to comply with the requirements of the Contract Documents. Approval shall not (1) shift any risk to HTA or relieve the Design-Builder for its obligations and liabilities under the Contract Documents; (2) be construed as a waiver by HTA of any noncompliance or breach by Design-Builder; or (3) be construed as a warranty agreement by HTA that the Design-Builder's methods will succeed or will be the most efficient or economical method of accomplishing the Work.

As-Built Drawings and As-Built Plans -- Final drawings and specifications furnished by the Design-Builder, documenting the details and dimensions of the completed Work.

Authorized Representatives -- The individuals designated by each Party to act on that Party's behalf.

Betterment -- With respect to a given Utility, "Betterment" has the meaning (if any) set forth in the applicable Third Party Agreement applicable to the Utility, and in all other cases shall mean any upgrading of a Utility that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, level of service, efficiency or function of a Utility over that which was provided by the existing facility. The following actions or activities are not considered Betterments unless otherwise provided in the applicable Third Party Agreement: (1) any upgrading which is necessary to complete the Project; (2) replacement devices or materials that are of equivalent standards even though not identical; (3) replacement of devices or materials no longer regularly manufactured with the next highest grade or size; (4) any upgrading required by applicable Government Rules; (5) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and (6) any upgrading or replacement required by applicable utility standards.

Business Day or Business Days -- Unless otherwise indicated, the term "Business Day" or "Business Days" means HTA business days. If a period of time designated in this RFP ends on a holiday, the period shall end on the next HTA business day. A complete list of holiday office closures can be found at <https://hta.org/how-to-ride/holidays/>.

Change -- Additions, deletions, or other revisions to the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract Documents.

Change Notice -- A written notice issued by HTA to the Design-Builder describing a proposed Change and requesting the Design-Builder to submit a Cost and Schedule Proposal (CSP).

Change Order -- A document signed by Design-Builder and HTA that authorizes a Change.

Claim -- A written demand by the Design-Builder to HTA for: (1) a time extension; (2) an adjustment or interpretation of Contract terms; (3) an increase in the Contract Price or other payment of money in addition to the Contract Price; or (4) other legal, equitable, or contractual relief.

Compensable Event -- An action or event that satisfies the applicable conditions and requirements set forth in Article X hereof and allows the Design-Builder an adjustment in the Contract Price.

Compensable Delay -- An action or event that satisfies the applicable conditions and requirements set forth in Article X hereof and allows the Design-Builder an adjustment in Contract Price or an extension to Contract Time.

Completion Deadline -- The Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.

Contract— The entire set of terms, conditions, requirements and directions that collectively constitute the obligations of the Design-Builder in the performance of the Work. The list of Contract Documents and their order of precedence is set forth in the Agreement.

Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.

Contract Price—The money that HTA has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.

Contract Time— The number of calendar days allowed for the completion of the Work (or a specified element, phase, or stage thereof) by the Design-Builder, including any authorized extensions of time. Contract Time shall begin on the date of the Notice to Proceed.

Construction Documents – All shop Drawings, working Drawings, samples, and Quality Assurance documents necessary for construction of the Project in accordance with the Contract Documents.

Construction Work – All elements and components of the Work generally associated with construction and installation of the Hydrogen Fueling Station that the Design-Builder is required to perform and complete under the Contract Documents, specifically excluding Transitional Services. Construction Work generally begins after all pre-conditions as set forth in Article V are satisfied.

Cost and Pricing Data -- The detailed cost and pricing data and supporting documentation submitted by the Design-Builder to HTA in justification and support of a Request for Change or Claim or in response to a Change Notice.

Cost and Schedule Proposal or CSP -- The Design-Builder's submittal, included in a Request for Change or provided to HTA in response to a Change Notice, that identifies price and/or schedule adjustments associated with a Change and which is justified by Cost and Pricing Data.

Critical Path -- The line on a Critical Path Schedule through the various Project tasks at the intersection of the points of their logical relationship function points or nodes, that controls the time of completion of the Work.

Critical Path Schedule -- The time-scaled and resource loaded schedule submitted by the Design-Builder that includes the planned sequence of activities showing the interrelationships and dependencies of the elements that comprise the Work (i.e. individual tasks, number of calendar days required to perform each task, and their logical relationship); the progress of the Work and subordinate activities and their respective Milestones, durations, sequences, and interrelationships that represent the Design-Builder's Work plans; and the Contract Price, distributed over the period of the Contract . The Critical Path Schedule includes the entire Contract Time from the NTP Date to the Completion Deadlines.

Cultural Resource -- Any prehistoric or historic period artifact, site, building, structure, material remain, or traditional use area resulting from, or associated with, human cultural activity.

Historically important cultural resources are those eligible for inclusion on the National Register of Historic Places.

Defect -- A flaw, fault, omission, or inaccuracy in Materials or the Work.

Deficiency or Deficient -- One or more of the following: (1) Defect(s) in any of the Work related to construction, Materials, workmanship or functionality; (2) Defect(s), omission(s), and deviation(s) in any of the Design Work furnished by the Design-Builder; (3) unapproved deviation(s) from the Contract requirements, any applicable codes, or any applicable standards; or (4) other problem(s) that may result in the Work or any portion thereof not performing in accordance with the Contract requirements.

Definitive Design—The point in the design process at which the design concepts are defined and the Project configuration is finalized.

Design Acceptance—Written confirmation by HTA that the design conforms to the Contract Documents. Design Acceptance is required as part of Final Acceptance.

Design-Builder— The successful Proposer selected pursuant to the RFP and with whom HTA has entered into the Agreement to complete the Work.

Design-Builder's Project Manager— The individual designated by Design-Builder in its Proposal, or substitute individual designated in writing by Design-Builder to undertake such role, following Approval of the substitution by HTA.

Design-Builder-Related Entity -- Any employee, agent, or Subcontractor of the Design-Builder, or any other person for whom the Design-Builder is legally or contractually responsible.

Design Documents -- Maps, Preliminary Engineering Plans, Design Plans, Specifications, reports, calculations, records, submittals, and other specified documents prepared by the Design-Builder and/or Designer in the course of performing Project Design Work.

Design Plans -- The plans prepared by the Designer during design development to represent the Project.

Design Requirements -- Those specifications contained in the Contract Documents, including the Fueling Station Specifications, that specify the minimum acceptable technical standards and define the limits within which the design of the Project shall be developed and conducted.

Design Review -- A comprehensive and systematic examination of the design, as specified in this Contract, to verify that Design Documents, submittals, and the Design Work are in conformance with the requirements of the Contract Documents. Design Review includes participation by the Design-Builder, HTA, and third parties in Design Review meetings, auditing, and spot-checking, as described in more detail in this Contract and the other Contract Documents.

Design Work -- The scope of design services the Design-Builder is required to perform and complete under the Contract.

Designer -- The firm that leads the team furnishing or performing the Design Work and serves as Engineer of Record or Designer of Record.

Differing Site Condition -- Unknown physical conditions of an unusual nature encountered in performing the Work that (1) differ materially from those indicated in the Contract Documents and/or Reference Documents, and (2) differ materially and substantially from those conditions ordinarily encountered in the area of the Project and generally recognized as inherent in the type of Work provided for in the Contract. The term "Differing Site Condition" includes the discovery on or near the Site of any archaeological, paleontological, or Cultural Resource, but does not include any condition that was indicated in the Contract Documents or the Reference Documents or any condition that was otherwise known to the Design-Builder as of the Proposal Date.

Drawings—All maps, drawings, plans, profiles, reports, cross section, and renderings, and all software and hardware, developed for the design and construction of the Project.

Effective Date—The date, indicated in the Agreement, on which the Agreement becomes effective.

Engineer of Record or Designer of Record—The California registered professional engineer that (1) is an integrated and integral member of the Design-Builder or Design-Builder Related Entity; (2) is responsible for and in charge of the Design of the Project and performing Design Work under the Contract Documents; (3) provides signed and sealed Final Design Documents; and, (4) retains full legal and professional responsibility for those documents, and all materials included therein, throughout the performance of the Work and thereafter. The terms "Engineer of Record" and "Designer of Record" are interchangeable terms.

Environmental Approval-- An approval granted to HTA or to the Design-Builder by a Federal, State, or local environmental governmental agency that is necessary for, or otherwise relates to, the design and construction of the Project or the operations of hydrogen fueling services after the Project is completed.

Environmental Laws-- All Government Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or emissions, discharges, release, or threatened releases of hazardous, toxic or dangerous waste, substance, or material into the environment or relating to the manufacture, processing, use, treatment, storage, disposal, transport or handling of Hazardous Materials or otherwise relating to the protection of public health, public welfare or the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. (CERCLA); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (RCRA); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the National Environmental Policy Act, 42. U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and all State and local laws, ordinances, and regulations, including the California Environmental Quality Act, that are for the protection of public health, public welfare,

or the environment and are applicable to public works projects in the State, including those developed and/or implemented by the City of Eureka, or Humboldt County.

Equipment -- All apparatus, machinery, tools, and equipment, together with the necessary supplies for their operation and maintenance, necessary for the proper construction and acceptable completion of the Work.

Event of Default -- An act or omission of the Design-Builder that may give rise to a Termination for Default under Article XV hereof.

Excusable Delay -- A delay to the Critical Path Schedule that satisfies the applicable conditions and requirements set forth in Article X hereof and allows the Design-Builder an extension in Contract Time.

Final Acceptance— Written notice from HTA to Design-Builder issued upon the completion of all Construction Work and acceptance of the Construction Work by HTA which states that all required tasks and elements of the Construction Work have been completed in a satisfactory manner and in compliance with the Contract Documents.

Final Acceptance Date—The date of HTA’s written notice to Design-Builder of HTA’s Final Acceptance.

Final Acceptance Deadline -- The deadline for submitting Final Acceptance, as specified in Section 3.03 hereof.

Final Design Documents—The completed and stamped final construction plans (including Drawings, elevations, sections, calculations, details and diagrams) and specifications needed by Design-Builder to construct the Project.

Final Payment – The last Progress Payment made by HTA to Design-Builder for the Construction Work.

Float -- The difference between early completion times and late completion times for activities as shown on the Critical Path Schedule, and shall include any time contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of the term "Work").

Force Majeure Event—Any extraordinary and unforeseeable event beyond the control of Design-Builder and not due to an act of omission of the Design Builder, or any Design-Builder-Related Entity, to the extent that the event (or the effects of the event) materially and adversely affects Design-Builder’s obligations under the Contract and could not have been avoided or prevented by due diligence and use of reasonable efforts by Design Builder. The following events can be a “Force Majeure Event” provided that the Design-Builder has taken all commercially reasonable actions to forestall, mitigate or avoid potentially negative impacts to the Project: (1) any rebellion, war, riot, act of terrorism, or epidemic; (2) extreme weather conditions; (3) any change in Laws or Regulations, excepting applicable utility standards, resulting in requirements applicable to the project becoming materially different from the requirements applicable as of the Effective Date; (4) the suspension, termination, interruption,

or denial by a government entity of any permit or approval required to be in obtained or maintained in force; and, (5) any national or regional strike or work stoppage not involving the employees of the Design-Builder or a Design-Builder-Related Entity.

Fueling Station Specifications – The Specifications, Approved by HTA, indicating or describing the key features and components of the fueling station to be provided by the Designer-Builder, including the total volume of hydrogen storage, the number of cylinders, the number of hydrogen dispensers, and related items, as may be modified or supplemented by the Design-Builder during the performance of the Project.

Fuel Supply Services – The supply of hydrogen fuel needed for HTA to operate fuel cell electric vehicles as specified in the Contract Documents.

Goods -- The Materials, Equipment, and other products incorporated into or required to perform the Work, or otherwise furnished by the Design-Builder in accordance with the Contract Documents.

Government Rule -- Any statute, regulation, ordinance, judgment, order, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement, or other governmental restriction or any similar form of decision of or determination by, or interpretation or administration of any of the foregoing by, any government entity, which is directly applicable to the Work or the Project.

Governmental Approval -- Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, registration, or ruling required by or with any government entity in order to design and construct the Project.

Hazardous Materials -- Any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 United States Code (USC) § 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC § 5101, et seq.; the Resource Conservation and Recovery Act, 42 USC § 6901, et seq.; the Toxic Substances Control Act, 15 USC § 2601, et seq.; the Clean Water Act of 1977, 33 USC §1251, et seq.; the Clean Air Act, 42 USC § 7401, et seq.; and any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material. The term does not include asbestos piping (which shall be considered a Utility).

Hazardous Materials Management -- Sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Government Rules.

Hazardous Waste -- Material that is defined or listed as hazardous waste in 40 CFR 261.3.

HTA— Humboldt Transit Authority.

HTA-Caused Delays— An unavoidable delay, to the extent it negatively impacts the Critical Path Schedule, which arises from the following causes and no others: (1) HTA-Directed Changes; and (2) failure or inability of HTA to provide responses within the time periods indicated in the Contract Documents to proposed schedules, plans, Design Documents, Construction Documents, and other submittals for which a response by HTA is explicitly required by the Contract Documents.

HTA-Directed Change—Any change in the Work as described in the Contract Documents that HTA directs the Design-Builder to perform.

HTA's Project Manager—The individual or firm designated by HTA as its Project representative and having direct supervision of the administration and implementation of the Contract Documents.

Hydrogen Fueling Station or Hydrogen Refueling Station -- The facility to be completed as HTA Hydrogen Refueling Station Project 23-01 and pursuant to the Contract Documents, which provides fuel to vehicles at Humboldt Transit Authority.

Incidental Utility Work-- All of the following work necessary for the construction of the Project: (1) The adjustment of Utility appurtenances (e.g., manholes, valve boxes, and vaults); (2) temporary relocations; (3) All work necessary to remove any Utilities (whether or not in use as of the Proposal Date) or for facilities which the Design-Builder proposes be relocated to accommodate or permit construction of the Project, regardless of whether replacements for such Utilities are being installed in other locations; (4) Resurfacing or re-striping of streets or highways made necessary by relocation work; and (5) Coordination with Utility Owners.

Key Personnel -- The Design-Builder's Project Manager, Design Manager, Construction Manager, Quality Assurance/Quality Control (QA/QC) Manager, Safety Manager, Environmental Compliance Manager, Project Scheduler, Lead Structural Engineer, Geotechnical Engineer, and Qualified Stormwater Pollution Prevention Plan Developer/Practitioner (QSD/QSP).

Liquidated Damages -- Payments owed by the Design-Builder to HTA for failure to meet Completion Deadlines or Milestones, in the amounts and categories set forth in Article XIII hereof.

Major Subcontract—Any Subcontract or combination of Subcontracts with a single entity for Design or Construction of the Project or for special fabrication and installation of a portion of the Work that will be paid an amount exceeding 5% on the initial Contract Price; excluding therefrom, the cost of any Materials that are obtained by the Subcontractor from a separate Supplier.

Major Subcontractor— Any entity, firm, partnership, association or individual that is a party to a Major Subcontract.

Material -- Any materials approved by HTA's Project Manager and conforming to the requirements of the Technical Specifications.

Milestone—A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice to Proceed or NTP— Written notice from HTA to Design-Builder fixing the date on which Design-Builder shall start to perform the Work.

NTP Date -- The date set forth in the Notice to Proceed for the commencement of the Work, which shall be the start date for the calculation of Contract Time and determination of achievement of the Completion Deadlines.

Operations and Maintenance Services – The provision of such services that commence upon Final Acceptance of the Hydrogen Fueling Station as specified in the Contract Documents.

Payment Bond or Labor and Materials Bond -- The approved form of security, executed by the Design-Builder and its Surety or Sureties, guaranteeing the payment of all legal charges, costs, amounts, and debts, including payments to Subcontractors and Suppliers, pertaining to the Construction Work. Also referred to herein as the Labor and Materials Bond.

Performance Bond -- The approved form of security, executed by the Design-Builder and its Surety or Sureties, guaranteeing performance of all Construction Work in compliance with the requirements of the Contract Documents, including all Change Orders and Contract Amendments.

Performance Specification -- The specifications to be developed by the Design-Builder that establish requirements for the Work in terms of design parameters and performance parameters and metrics to be met.

Preliminary Critical Path Schedule -- The executive management schedule submitted with the Design-Builder's Proposal, including the Design-Builder's mobilization plan, that is used to monitor and measure the Design-Builder's progress until the Critical Path Schedule is Approved. The Preliminary Critical Path Schedule provides details for the first one hundred twenty (120) Days of the Work and general schedule information for subsequent periods.

Preliminary Engineering Plans— The preliminary engineering level schematic designs, surveys, mapping, and related documents to be provided by the Design-Builder as part of its Scope of Services.

Price Proposal or PP -- The portion of the Proposal that sets forth the Design-Builder's price for performing all of the Work and includes other information as specified in the Request for Proposals.

Pricing Information -- The pricing information submitted by the Design-Builder with its Proposal and incorporated into Contract Documents.

Procurement Website. The following URL: <https://hta.org/procurement-opportunities/project-23-01/>.

Progress Payment -- Payments to the Design-Builder by HTA relating to the completion of specific elements of Work in accordance with the Schedule of Values agreed upon by HTA and the Design-Builder, as further described in accordance with Article XVII hereof.

Progress Update — The Design-Builder submittal that reflects completed activities and Work achieved, portions of activities completed, and remaining durations, submitted to HTA on a monthly basis or as otherwise directed by HTA's Project Manager. The Progress Update includes the percentage of Work actually completed and scheduled and the progress along the Critical Path.

Project—The total undertaking to be accomplished for HTA by designers, engineers, Design-Builder, and others, including planning, study, design, construction, testing, commissioning, start-up, Operation and Maintenance, and Fuel Supply to design and construct the Hydrogen Fueling Station and of which the Work to be performed under the Contract Documents is a part.

Project Completion Date – The date on which the Design-Builder's obligations under the Contract Documents have been completed and/or otherwise terminated.

Project Schedule -- One or more, as applicable, of the family of schedules for the phasing, timing and execution of the Work and for tracking performance of the Work, as described in the Contract.

Proposal—A proposal submitted to HTA in response to the RFP.

Proposer— An individual, partnership, association, joint venture or entity that submits a Proposal to HTA pursuant to the RFP.

Protection in Place -- Any activity undertaken to avoid damaging an existing Utility or other facility which does not involve removing or relocating that facility, including staking the location of the facility, avoidance of the facility location by construction equipment, installing steel plating or concrete slabs, encasement in concrete and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition. For example, supporting a pole in place during excavation and temporarily lifting power lines without cutting them would both be considered Protection in Place.

Punch List -- The list of Construction Work that remains to be completed after achievement of Substantial Completion, which is generally limited to minor incidental items of Work necessary to correct imperfections that have no adverse effect on the safety, use, or operability of the Hydrogen Fueling Station, but must be completed as condition of the Contract requirements.

Punch List Completion-- Completion of all items of Construction Work identified on the Punch List.

Qualifying Hydrogen Fuel – Hydrogen fuel that meets the Technical Specifications defined in the Contract Documents.

Quality Assurance or QA -- All planned and systematic oversight actions necessary to provide confidence that the Design-Builder is performing Quality Control in accordance with the Quality

Management Plan, that all Work complies with the Contract, and that all Materials incorporated in the Work, all Equipment, and all elements of the Work will perform satisfactorily for the purpose intended. Oversight actions include, but are not limited to, monitoring and verification of design through auditing, spot-checking, and participation in the review of the design, and monitoring and verification of construction through auditing, spot inspections, and verification sampling and testing at production sites and the Site.

Quality Control or QC -- The total of all activities performed by the Design-Builder, Designer, Subcontractor, producer or Manufacturer to ensure that the Work meets the requirements of the Contract Documents. For design this includes procedures for design quality, checking, design review including reviews for constructability, and review and approval of Working Plans and Design Plans. For construction this includes procedures for Materials handling and construction quality; inspection, sampling, and testing of Materials, plants, production, and construction; Material certifications; calibration and maintenance of Equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

Quality Control/Quality Assurance (QA/QC) Manager -- The individual employed by the Design-Builder who is responsible for the overall QA/QC program of the Design-Builder, including the quality of management, design, and construction.

Quality Management Plan -- The plan described in the Contract Documents that sets out the Design-Builder's means of complying with its obligations in relation to Quality Assurance and Quality Control, which plan shall be provided and maintained in accordance with the Contract Documents following review and Approval by HTA.

Reference Documents -- The documents provided to Design-Builder as attachments to the RFP. Reference Documents, including plans contained therein and/or so designated, are not Contract Documents and are provided for informational purposes only and are relied upon at the Design-Builder's own risk.

Released for Construction -- In reference to a particular Design Document or Design submittal, an authorization by HTA to the Design-Builder to proceed with the Construction Work portion of the Work. A Release for Construction by HTA shall not shift any risk to HTA or relieve the Design-Builder from its responsibility for the Design Document or Design submittal that is the subject of such Release, nor otherwise modify or reduce the Design-Builder's obligations and liabilities under the Contract Documents.

Request for Change or RFC -- A written request by Design-Builder to HTA, detailing any proposed Change to the Work or the Contract. This is the only mechanism by which HTA will respond (and potentially approve through a Change Order) to any proposed Change initiated by the Design-Builder.

Request for Information or RFI -- A written request submitted to HTA by the Design-Builder, detailing any need for clarification or information regarding a portion of the Work or the Contract.

Request for Proposals, or RFP – The Request for Proposals 23-01 for the Hydrogen Refueling Station Project.

Safety Plan -- The specific plan that sets out the Design-Builder's means of complying with its obligations regarding Project safety.

Schedule of Values -- The breakdown of the Contract Price into units relating to specific components of the Work, Milestones, and the Critical Path Schedule.

Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Design-Builder and submitted by Design-Builder to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

Site—Lands or areas indicated in the Contract Documents as being furnished by HTA upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by HTA which are designated for the use of Design-Builder.

Site Security and Maintenance Plan -- The plan that sets out the Design-Builder's means of complying with its obligations regarding Site security and Site maintenance.

Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

Subcontractor—An individual or entity having a direct contract with Design-Builder or with any other Subcontractor for the performance of a part of the Work.

Substantial Completion— The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with Article XII, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

Substantial Completion Deadline -- The deadline for achieving Substantial Completion of the Work, as specified in Section 3.03 hereof.

Supplier -- Any Person that supplies machinery, Equipment, Materials or systems to the Design-Builder or any Subcontractor in connection with the performance of the Work and that does not perform Work at the Site. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Technical Proposal, or TP – A Proposal submitted to satisfy portions of the RFP requirements.

Technical Specifications – The Specifications to be developed by the Design-Builder that are needed to adequately and completely describe in narrative or tabular form the locations,

dimensions, character, properties, performance requirements, other requirements and details of the Work. Technical Specifications include, without limitation, all things entitled, described, stated or referenced in any Contract Document as a “specification” or “Technical Specification”.

Transitional Services – The provision by Design-Builder of either Operation and Maintenance Services or Fuel Supply Services, or both, in accordance with the requirements of the Contract Documents.

Transitional Services Period – The time period beginning on the Final Acceptance Date during which Design-Builder provides Transitional Services pursuant to the Contract Documents, and ending upon the conclusion of Design-Builder’s providing any Transitional Services under the Contract Documents.

Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

Utility -- A privately, publicly, or cooperatively owned facility (which term includes lines, pipes including asbestos piping, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. The necessary appurtenances to each Utility facility shall be considered part of the facility, including the Utility source, guide poles, feeder service lines, supports, etc.). Without limitation, any service lateral connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service lateral.

Utility Information -- The Utility-related data provided by HTA, including information provided in the Contract Documents, Reference Documents, or otherwise included in the RFP, that identifies or describes the Utilities that may be impacted by the Project.

Utility Owner -- The owner or operator of any Utility (including Government Entities and privately held entities).

Utility Standards -- The standard specifications, standards of practice, and construction methods that are applicable to a relocation pursuant to the terms and conditions of a specific agreement; provided that if a particular facility is not governed by such an agreement or the any such agreement does not specify applicable standards, the term “Utility Standards” shall mean the standard specifications, standards of practice, and construction methods that are customarily applied by a Utility Owner to its facilities, in effect as of the Proposal Date.

Warranties -- The written commitment of the Design-Builder (including any Supplier or Subcontractor) as set forth in the Contract Documents regarding quality and performance over a specified period of time after Final Acceptance.

Work—The entire design and construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, commissioning, Operations and Maintenance Services, and Fuel Supply, all as required by the Contract Documents.

Working Plans -- Those plans prepared by the Design-Builder to supplement the Design Plans to specify additional details and procedures for the Construction Work, including the following: (1) Construction details; (2) Fabrication plans; (3) Shop plans; and (4) Similar data required for the successful completion of the Work.

Section 1.02 Contract Documents.

- (a) **General.** The Contract Documents are specified in the Agreement. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The order of precedence among and between the Contract Documents is specified in the Agreement.
- (b) **Conflicts Between Contract Documents.** In the event of a discrepancy between Contract Documents, the following shall apply:
 - (i) *Conflicts Between Contract Documents (General).* In case of conflicts between Contract Documents, the Contract Document order of precedence dictates which Contract Document governs, and thus, which corresponding provisions take precedence (between two Contract Documents).
 - (ii) *Conflicts Between Contract Documents of Equal Precedence.* In case of conflicts between Contract Documents of equal precedence, the more stringent requirement (between the conflicting Contract Documents), as determined by HTA, shall govern.
 - (iii) *Conflicts within a Contract Document.* In case of conflicts within a Contract Document, the more stringent requirement (within the conflicting Contract Document), as determined by HTA, shall govern.
 - (iv) *Small Scale vs. Large Scale.* In case of conflicts between small and large-scale Contract Documents, the large scale shall govern.
 - (v) *Written Figures vs. Scaled Dimensions.* In the event of a discrepancy between a figure written on a Contract Document and the scaled dimensions, the written figure shall govern.
- (c) **Discovery of Contract Document Conflicts.** If the Design-Builder, or its Subcontractors and Suppliers at any tier, discovers a discrepancy or conflict between or within any Contract Documents, the Design-Builder shall notify HTA in writing (with a Request for Information (RFI)) as soon as practicable from the time of discovery, citing the specific documents and provisions that are in conflict. Upon receipt of such RFI, HTA may do one or more of the following:

- (i) Provide the Design-Builder with instruction and/or interpretation specific to the context of the RFI, based upon the general guidelines for Contract Document conflict interpretation set for the above.
- (ii) Revise and re-issue, or direct Design-Builder to revise and re-issue, the conflicting Contract Documents in question, to remove any document conflict and potential misinterpretation in the future.

Section 1.03 Interpretation of Contract Documents. The following principles shall apply to the interpretation of the Contract Documents:

- (a) All requirements in this Contract and the other Contract Documents apply to all aspects and components of the Work unless otherwise specified.
- (b) The singular includes the plural, and vice versa.
- (c) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to.
- (d) The words "including", "includes", and "include", shall be deemed to be followed by the words "without limitation". Words such as "herein", "hereof, and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section.
- (e) Words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings. Words of any gender shall include all genders where appropriate.
- (f) References to persons include their respective permitted successors and assigns and, in the case of government entity, persons succeeding to their respective functions and capacities.
- (g) Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.
- (h) The interpretation of this Contract by HTA is final. The Design-Builder shall proceed with the Work based on HTA's interpretation, with the right to submit a Change Request (CR) in accordance with Article X hereof if the Design-Builder believes that that HTA's interpretation constitutes a change in the Contract Documents or the Work, and without prejudice to the Design-Builder's right to submit to dispute resolution under Article XV those matters that are subject to that Article.
- (i) HTA may make such additions to, or corrections and/or interpretations of any Contract Documents as are necessary to ensure that everything necessary to complete the Work in accordance with the intent of the Contract, or that customarily performed to complete the Work, is performed by the Design-Builder in accordance with the intent of the Contract.

- (j) In all cases where a Party is to provide consent or approval or exercise judgment or discretion, and provided that it is not expressly stated that the matter is within the sole discretion of such party, such Party shall reasonably exercise such judgment or discretion and shall not unreasonably withhold or delay such consent or approval.
- (k) The individual documents comprising the Contract Documents are complementary, indicating all aspects of the Work. Anything mentioned or shown in any Contract Document, which is not mentioned in or shown in another Contract Document, shall be of like effect as if shown or mentioned in all Contract Documents.
- (l) Whenever the Design-Builder is specifically directed or implied by these provisions to "give notification" or "notify", it is implied that the Design-Builder give such notification to HTA's Project Manager. Likewise, whenever the provisions state "notification will be given" or "will be notified", it is implied that HTA's Project Manager will give such notification to the Design-Builder.

Section 1.04 Referenced Standards and Specifications.

- (a) Applicable Standards. -- Except as otherwise specified in the Contract Documents or otherwise directed by HTA, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication ("Referenced Standards") affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Date.
- (b) Interpretation. -- In interpreting Referenced Standards, the following apply:
 - (i) Reference to the "Owner," unless specifically defined otherwise, means HTA.
 - (ii) Reference to the Engineer in the context of provider of compliance judgment means the Design-Builder's Design Manager.
 - (iii) Reference to "Plan(s)" means the Final Design Documents.
 - (iv) Cross-references to measurement and payment provisions contained in the referenced standard shall not apply; the Design-Builder shall only look to the payment provisions contained in this Contract.
 - (v) In case of conflicts within Referenced Standards, the more stringent standard (within the conflicting Referenced Standards), as determined by HTA, shall govern.

Section 1.05 Omission of Details; Clarification from HTA.

- (a) Omissions. -- Omission of details or errors in the Work from the Contract Documents or the misdescription of details of Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve the Design- Builder of its

responsibility for performing such omitted Work, or the misdescribed details of the Work, and such Work shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order or Modification to the Contract.

- (b) Clarifications. -- If the Work to be done is not sufficiently detailed or explained in the Contract Documents, or if there is a conflict between any of the Contract Documents, or between the documents and the actual Site, the Design-Builder shall notify HTA in writing and request further written clarification (through a RFI), and shall thereafter conform to the clarification provided. The Design-Builder shall promptly submit written notification to HTA of all errors, omissions, inconsistencies, or other defects (including inaccuracies and inconsistencies) which it discovers in the Contract Documents, (through a RFI), and shall obtain from HTA specific instructions in writing regarding any such error, omission, or defect before proceeding with the Work affected thereby. HTA will resolve the discrepancy in writing before the Design-Builder proceeds further. HTA may also require the Design-Builder to modify plans or other documents to address any error or omission identified in a RFI.

Section 1.06 No HTA Liability.

- (a) No Liability. -- HTA will not be responsible or liable in any respect for any loss, damage, injury, liability, cost, or cause of action suffered by the Design-Builder or any Design-Builder-Related Entity, by reason of use of information contained in the Reference Documents or action or forbearance in reliance thereon. To the extent the Design-Builder or anyone on the Design-Builder's behalf uses any of such information in any way, such use is made on the basis that the Design-Builder, not HTA, has reviewed and approved and is responsible for such information. The Design-Builder represents and warrants that it is capable of conducting, and that it is obligated to conduct, all studies, analyses, and investigations as it deems advisable to verify or supplement such information, and agrees that any use of such information is entirely at Design-Builder's own risk and at its own discretion.
- (b) HTA Disclaimers. -- HTA does not represent or warrant that the information contained in the Reference Documents is either complete, reliable, or accurate, or that such information is in conformity with the requirements of the Contract Documents. HTA does not warrant or guarantee that the information made available by HTA or found in the Contract Documents covers all conditions at the Site or that such information or the Contract Documents should act as a substitute for personal investigation, interpretation, and judgment by the Design- Builder. Any extrapolation or interpretation of geotechnical boring information provided by HTA in the RFP to other locations by the Design-Builder shall be at the Design-Builder's risk. The Design-Builder shall be responsible for determining what additional geotechnical information is required to support its design, and the Design-Builder is responsible for obtaining such information and for the accuracy of such information.
- (c) Effect of Failure to Notify. -- If the Design-Builder fails to notify HTA of an apparent error, omission, or discrepancy in the Contract Documents, the Design-Builder shall be deemed to waive the right to claim any adjustment in the Contract Price. In addition, the Design-Builder may be fully liable for Losses suffered by HTA resulting from this failure to timely notify HTA of such a discrepancy.

- (d) Information Furnished by Others. -- HTA will not be responsible or liable in any respect to any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by the Design-Builder by reason of its use of any information furnished by others, or for any actions of forbearance in reliance thereon.

Section 1.07 Default Language and Units of Measure (UOM).

- (a) Language. -- All information, communication, documentation, and submittals on this Project shall be in the English language.
- (b) Units of Measure (UOM). -- Unless explicitly specified as otherwise in the Contract Documents or in a written notice by HTA, the English Imperial (lb/foot) system shall be the primary UOM used on the Project. Likewise, unless explicitly specified as otherwise by HTA, all communication and documentation related to the Work that contain any UOM, must utilize and express all measurements in the English Imperial system. The use of the Metric system to express UOM is also permitted, but only to the extent that it expresses the metric equivalent of the English Imperial UOM being used, and is provided as additional secondary data to the English Imperial UOM.

Section 1.08 Delivery of Performance and Payment Bonds, Evidence of Insurance.

- (a) Performance and Payment Bonds. When Design-Builder delivers the signed counterparts of the Agreement to HTA, Contractor shall also deliver to HTA the performance bond and payment bond.
- (b) Evidence of Design-Builder's Insurance. When Design-Builder delivers the signed counterparts of the Agreement to HTA, Design-Builder shall also deliver to HTA, the certificates, endorsements, and other evidence of insurance required to be provided by Design-Builder in accordance with Article VIII, except to the extent the Notice from HTA expressly establishes other dates for delivery of specific insurance policies.

ARTICLE II. ROLES AND RESPONSIBILITIES

Section 2.01 Performance Standards for Work.

- (a) Overall Standards. The Design-Builder shall furnish the Design of the Project and shall construct the Project as designed in a timely manner; in accordance with applicable professional engineering principles, the terms and conditions set forth in the Contract Documents, and applicable construction and manufacturing practices generally accepted as standards of the industry in the State of California; in a good and workmanlike manner; and free from construction defects. Except for Materials, services, and efforts otherwise specifically excluded from the Design-Builder's scope of work in the Contract Documents, all Materials, services, and efforts necessary to achieve Substantial Completion and Final Acceptance on or before the Completion Deadlines provided in the Contract Documents shall be the Design-Builder's sole responsibility; and the cost of all such Materials, services, and efforts are included in the Contract Price.

- (b) Management Responsibility. The Design-Builder shall be responsible for the total management and oversight of the design, construction, installation, budget and schedule controls, document controls, invoice /cost controls, administration of the Design-Builder's Quality Assurance and Quality Control programs, Design support during Construction of the Project, and inspection and testing of the Work provided under this Contract, pursuant to the terms and conditions hereof; provided that HTA may also conduct such testing and inspection as it considers appropriate. The Design-Builder shall be responsible for establishing the required organization and procedures and providing personnel and supporting equipment/facilities to ensure that the Project is completed in accordance with the Contract Documents, within the time schedule and Completion Deadlines set forth in the Contract Documents.
- (c) Compliance with Government Rules. The Design-Builder shall comply with the requirements of all applicable Government Rules and the conditions of any required licenses and permits in the performance of the Work. The Design-Builder shall be responsible for complying with such requirements at its sole cost and without any increase in the Contract Price or extension of any Completion Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. The Design-Builder will be required to obtain in due course any Governmental Approval for which it is responsible under the Contract Documents and thereafter to keep such Governmental Approvals in effect so as to enable the Work to proceed in accordance with the Contract Documents.
- (d) Performance as Directed. -- At all times during the term of this Contract, including during the course of, and notwithstanding the existence of, any dispute or Claim, the Design- Builder shall perform in a diligent manner and without delay, shall abide by HTA's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with the dispute resolution provisions of the Contract Documents.

Section 2.02 General Obligations of Design-Builder. The Design-Builder, in addition to performing all other requirements of this Contract and the other Contract Documents, shall:

- (a) Services, Materials, and Labor. Furnish all Design and other services, provide all materials and labor, and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents expressly state will be undertaken by HTA or other persons) to perform the Work and maintain the Project during construction in accordance with the requirements of the Contract Documents and all Government Rules and Governmental Approvals, so as to achieve Substantial Completion, Final Acceptance and Project Completion by the applicable Completion Deadlines.
- (b) Project Manager. Provide a Project Manager who shall: (1) have full responsibility for the prosecution of the Work; (2) act as agent and be a single point of contact in all matters on behalf of the Design-Builder; (3) be present (or an approved designee) at the Site at all times that Work is performed, and (4) be available to execute instructions and directions from HTA.
- (c) Designer. Use the Designer, and not shift any Work from the Designer to another design firm

without prior Approval in writing by HTA; provided that shifting Design Work among design subcontractors does not require HTA Approval.

- (d) Supervision. Supervise and be responsible for acts and omissions of all Design-Builder-Related Entities, as though all such Persons were directly employed by the Design-Builder.
- (e) Scheduling. Schedule and direct the Work to provide an orderly work progression, achieve on-time completion of all Milestones set forth in the Critical Path Schedule, and complete its Work within the Contract Time. To accomplish this requirement, the Design-Builder shall furnish such employees, materials, facilities, and equipment, and work such hours (including extra shifts, overtime operations, Sundays and holidays), as may be necessary.
- (f) Means and Methods. Be solely responsible for the performance of the Work, in accordance with its own means, methods, sequences, and procedures, and for coordination of all portions of the Work in compliance with the Contract.
- (g) Ascertaining Facts. Be solely responsible for its failure to ascertain the facts and take the actions described, represented, warranted and acknowledged herein and no provision of this Contract shall be construed to relieve the Design-Builder from responsibility for such failure.
- (h) Subcontractors and Suppliers. Be responsible for the acts and omissions of its Subcontractors and Suppliers.
- (i) Payment of Taxes. Pay all applicable Federal, State, and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a government entity, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.
- (j) Mitigation of Delay. Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying Design-Builder's forces to other work, as appropriate.
- (k) Quality. Meet all quality requirements.
- (l) Safety & Security. Meet all safety and security requirements specified in the Contract Documents and address safety issues and concerns raised by HTA.
- (m) Project Office. Provide a project office on or near the Site that satisfies the requirements of the Final Design Documents, Construction Documents, and other Contract Documents, and pay all costs associated with such project office.

Section 2.03 Cooperation by the Design-Builder.

- (a) General Obligation to Cooperate. The Design-Builder shall cooperate with HTA, and its consultants and contractors working on the Project, the Utility Owners, and Federal, State, and Local agencies with jurisdiction over the Project, in its performance of the Work, including

Design Reviews, construction inspections, and all other matters relating to the Work. The Design-Builder shall give its constant personal attention to the Work while it is in progress and shall cooperate with HTA and its other contractors in every possible way. The Design-Builder shall place in charge a competent and reliable English speaking Project Manager, who shall have authority to act for the Design-Builder, and shall be capable of managing the Contract and the design and construction Work being performed.

- (b) Other Contracts and Work; HTA Rights. HTA reserves the right to let other contracts in connection with this Project. There may also be other contractors, subcontractors, Utilities, employees and authorized representatives of HTA, other Government Entities, and other Persons working at or adjacent to the Site, in connection with this Project or other projects, during the performance of the Contract by the Design-Builder. The Design-Builder will not have exclusive access to or occupancy of the territory within or adjacent to the limits of the Project, and the Design-Builder should anticipate that its Work may be interrupted or delayed from time to time due to the concurrent activities of others. It is the obligation and duty of the Design-Builder under the Contract to coordinate its Work with the work of these contractors and other Persons.
- (c) Arrangement of Work. The Design-Builder shall arrange the Work and shall place and dispose of the Material being used so as to not unreasonably interfere with the operations of HTA or other contractors within or adjacent to the Site. The Design-Builder shall coordinate its Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.
- (d) Design-Builder Liability. The Design-Builder shall assume all liability, financial or otherwise, shall not be entitled to a Change Order or other relief and shall indemnify, defend, protect and save HTA harmless from any and all Losses or claims that may arise because of inconvenience, delay, or loss experienced by the Design-Builder because of the presence and operations of HTA and other contractors working within Site.

Section 2.04 Design-Builder Key Personnel and Organization.

- (a) Project Manager. The Design Builder's Project Manager shall have full authority to act for the Design-Builder and full responsibility for the prosecution of the Work and shall act as a single point of contact in all matters on behalf of the Design-Builder. HTA reserves the right to give direction to the Project Manager as necessary to complete the Work on schedule.
- (b) Organization. The Design-Builder's Proposal contained its Organizational and Management Structure and Key Personnel with an organizational chart showing the organization established by the Design-Builder for the performance of the Work, including: (1) lines of authority, responsibility, and communication; (2) office organization, if any, and (3) names, titles, and functions of all the Design-Builder's Key Personnel.
- (c) Key Personnel. The Design-Builder shall assign Key Personnel to the Project in accordance with the Organizational and Management Structure and Key Personnel set forth in its Proposal.
- (d) Changes in Key Personnel by Design-Builder. The Design-Builder shall not change any Key

Personnel without the prior written Approval of HTA. If the Design-Builder desires to make such a change, it shall submit a written request to HTA, setting forth (1) the specific reason for the change; and (2) the name and the qualifications of the proposed replacement Key Personnel, including documentation that such replacement has qualifications and experience equal to or greater than the individual being replaced. The Design-Builder shall be responsible for any additional costs caused by the replacement or substitution of Key Personnel.

- (e) Removal of Design-Builder Personnel by HTA. If HTA determines that any individual employed by the Design-Builder (including any Key Personnel), or by any Subcontractor, is not performing the Work in a proper and skillful manner, or that it is in the best interests of HTA, then at the written direction of HTA, the Design-Builder shall remove, or direct its Subcontractor to remove, such individual from the Project and such individual shall not be re-employed on any other HTA project without the prior written approval of HTA. HTA's decision to remove any personnel shall be final and binding on the Design-Builder. Upon such direction, Design-Builder shall remove the individual and resolve all employment or contractual issues at no cost to HTA. If the Design-Builder or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Work, then HTA may suspend the affected portion of the Work by delivery of written notice of such suspension to the Design-Builder. Such suspension shall in no way relieve the Design-Builder of any obligation contained in the Contract Documents or entitle the Design-Builder to any change in the Contract Price or Contract Time. Once compliance is achieved, the Design-Builder shall be entitled to and shall promptly resume the Work.
- (f) Additional Personnel. The Design-Builder shall assign such additional skilled, professional, and technical personnel as required to perform the Work and comply with the terms of the Contract Documents, including Subcontractor personnel.
- (g) Adequate Labor Forces. The Design-Builder shall, at all times during the Project, employ labor and Equipment which shall be sufficient to prosecute the several classes of Work to full completion in the manner and time specified. All Workers must have sufficient skill and experience to properly perform the Work assigned them. All Workers engaged on special or skilled Work shall have had sufficient experience in such Work to properly and satisfactorily perform it and operate the Equipment involved. Any Person employed by the Design-Builder whom HTA may deem incompetent or unfit to perform the Work shall be at once discharged and shall not be again employed.

Section 2.05 Project Meetings.

- (a) General Meeting Requirements. The Design-Builder is required to have personnel, with appropriate technical skills and decision-making authority, attend Project meetings. The Design-Builder shall prepare and update a master meeting calendar listing all scheduled Project related meetings (including community and third party meetings), which can reasonably be identified. The calendar shall be developed so as to maximize the availability for attendance of all participants. The calendar shall be updated at least weekly, and shall show a minimum of eight (8) weeks in advance. The calendar shall be available electronically, and/or on a website, and/or distributed on paper, at HTA's discretion. However, HTA may require a Project meeting at any time without notice.

- (b) Minutes. The Design-Builder will prepare minutes of all Project meetings and submit them to HTA within three (3) Business Days, unless otherwise agreed to by HTA in writing or specified in the Contract Documents. HTA shall have three (3) Business Days to review the minutes and request revision to the minutes unless otherwise specified in the Contract Documents. Any requested revisions must be submitted within three (3) Business Days of HTA's request.
- (c) Weekly Progress Meetings. HTA and the Design-Builder shall hold a weekly meeting, on a day mutually agreed to by the Parties, to assess the progress achieved by the Design-Builder during the previous week, and to review current RFIs, Change Requests, Change Order status, and other pending matters and issues. The Design-Builder's Project Manager shall attend the weekly meetings. The Design-Builder shall submit a progress schedule listing activities completed and in-progress for the previous week and the activities scheduled for the succeeding five (5) weeks based upon the Current CPM Contract Schedule Updates. The Design-Builder shall prepare minutes of all weekly progress meetings. The Design-Builder shall prepare and update a five (5) week rolling bar chart schedule that provides all scheduled activities, including: activity ID, description, early start and finish dates, total Float, original duration, remaining duration, percentage complete, and pertinent remarks as to the activity status.
- (d) Monthly Progress Meetings. HTA and the Design-Builder shall hold monthly meetings and field reviews. The attendees at these meetings shall include, at a minimum, the Design-Builder's Project Manager, HTA's Project Manager, and the Design-Builder's Design Manager and Construction Manager. These meetings shall include a briefing on the monthly Progress Schedule and a progress report by the Design-Builder and field verification of progress related to monthly Applications for Progress Payments.

Section 2.06 Role and Responsibilities of HTA.

- (a) General Role of HTA.
 - (i) *Overall Responsibilities*. HTA's responsibilities include the following:
 - 1) overseeing the Design-Builder's performance of the Work;
 - 2) giving Approval of and ordering Changes in the Work;
 - 3) reviewing and Approving the Design-Builder plans, programs, and schedules;
 - 4) conducting (directly or through consultants) verification sampling and testing and inspection of the Work;
 - 5) reviewing and Approving the Design-Builder's invoices and authorizing payments;
 - 6) monitoring the Design-Builder's Work;
 - 7) determining when Completion Deadlines for the Work have been met; and
 - 8) reviewing the application for Final Acceptance and determining when the Design-Builder has satisfied the requirements for Final Acceptance.
- (b) Effect of Reviews, Inspections, Tests, and Approvals. The Design-Builder shall not be relieved of any obligation to perform the Work in accordance with the Contract Documents because of any review, test, inspection, or Approval performed or granted by HTA or any other Persons, or by any failure of HTA or any other Person to take such action. The reviews, inspections, tests, and

approvals conducted by HTA, its consultants, Utility Owners, or Federal, State and Local Agencies do not constitute approval of the Materials or Work reviewed, tested, or inspected and do not relieve the Design-Builder of its responsibility for the Work. HTA may reject or Approve any Work or Materials, and may request changes and/or identify additional Work which must be done, at any time prior to Final Acceptance, whether or not previous reviews, inspections, tests, or Approvals were conducted.

Section 2.07 Personal Liability of Public Officials. In carrying out the provisions of the Contract Documents or in exercising powers or authority granted to them by or within the scope of this Contract, there shall be no liability to HTA, HTA's Project Manager, or its authorized representatives or agents, either personally or as officials of HTA, it being understood that in such matters they act solely as agents and representatives of HTA.

ARTICLE III. TIME REQUIREMENTS AND PROJECT SCHEDULE

Section 3.01 Notice to Proceed; Submittals.

- (a) Time of Essence. Time is of the essence in this Contract. In carrying out the Work, the Design-Builder is required to perform all Work diligently and take all reasonable steps necessary to ensure completion of the Work in accordance with each of the Completion Deadlines. If any circumstances arise that cause the Design-Builder to believe that a Completion Deadline may or will not be met, the Design-Builder shall immediately notify HTA in writing.
- (b) Notice of Award and Contractor Submittals. Following Contract Award by HTA, HTA shall provide the Design-Builder with a Notice of Award. The Notice of Award will direct the Design-Builder to submit, within seven (7) Business Days after receipt of Notice of Award:
 - (i) The required Performance Bond and Payment Bond;
 - (ii) The required certificates of insurance;
 - (iii) The Proprietary Bid Documents; and
 - (iv) An executed copy of the Agreement.
- (c) Notice to Proceed. The Design-Builder shall begin performance of the Work as directed in the Notice to Proceed. HTA will issue the NTP no later than ten (10) Business Days after Notice of Award under subsection (a), provided the following conditions have been satisfied:
 - (i) HTA has received and Approved the Design-Builder's Performance Bond and Payment Bond;
 - (ii) HTA has received and Approved all required insurance certificates;
 - (iii) HTA has received the Design-Builder's Proprietary Bid Documents in accordance with Section 18.02 hereof;
 - (iv) HTA has Approved the Design Builder's Preliminary Critical Path Schedule; and
 - (v) The Parties have executed the Agreement.
- (d) Key Post-NTP Submittals. Within thirty (30) calendar days after issuance of the NTP, the Design-Builder shall submit to HTA, for its review and Approval, each of the plans and programs

identified in the Contract Documents (unless a different time period is specified herein), including but not limited to the Subcontracting Plan, Quality Management Plan, Site Security and Maintenance Plan, Injury and Illness Prevention Program, and Hazardous Material Management Plan. In addition, within sixty (60) calendar days after issuance of the NTP, the Design-Builder shall submit to HTA, for its review and Approval, the Critical Path Schedule.

Section 3.02 Contract Time. The Contract Time shall commence on the date of the issuance of the Notice to Proceed. The Contract Time for completion of all Work is identified in the Agreement. Upon the issuance of the NTP, the Design-Builder shall commence and diligently prosecute the Work to completion within the Contract Time.

Section 3.03 Completion Deadlines.

- (a) Achieving Completion Deadlines. The Design-Builder shall achieve Substantial Completion, Final Acceptance by the applicable dates specified in the Agreement.
- (b) No Time Extensions. Except as otherwise specifically provided in this Contract, HTA shall have no obligation to extend a Completion Deadline and the Design-Builder shall not be relieved of its obligation to comply with the Project Schedule and to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines for any reason.

Section 3.04 Project Schedule and Construction Staging.

- (a) Preliminary Schedule. Upon issuance of the NTP and prior to Approval of the Critical Path Schedule, the Design-Builder shall initiate Work and proceed in accordance with the Preliminary Critical Path Schedule.
- (b) Preparation and Submittal of Critical Path Schedule. The Design-Builder shall, by the time specified in Section 3.01(d) hereof, prepare and submit to HTA, for its review and Approval, a detailed resource loaded Critical Path Schedule, along with a detailed plan of the Work, and shall thereafter prepare and submit monthly Progress Updates. The Design-Builder shall indicate on the Critical Path Schedule the anticipated date for completing the various stages of design and construction and shall keep HTA informed of any delays. The Critical Path Schedule shall include projected delivery dates for all required Contract deliverables and the duration and dates for all required HTA reviews, inspections, and Approvals.
- (c) Use of Critical Path Schedule. The Critical Path Schedule shall be the Design-Builder's working schedule and shall be used to plan, organize, and execute the Work; record and report actual performance and progress; and forecast remaining Work. The Critical Path Schedule shall indicate the anticipated dates for completing any Contract milestones and shall include completion of all Work by the scheduled Completion Deadlines. Upon Approval of the Critical Path Schedule by HTA, it shall be deemed incorporated into and shall become a material part of the Contract. Approval of the Critical Path Schedule by HTA, and compliance with requirements regarding Schedule submittals, including the monthly Progress Updates, shall be a condition precedent to HTA's Approval of any Progress Payments.

- (d) Impacted Schedule. To the extent that there are pending Change Orders, Contract Amendments, known delays, or Claims for delay which may affect the Critical Path Schedule, the Design-Builder shall also submit an adjusted Critical Path Schedule on a monthly basis, as impacted by all such pending Changes, representing its best estimate of actual performance ("Impacted Schedule"). The Design-Builder shall submit the Impacted Schedule without regard to whether the pending Change Order or Contract Amendment has been recognized or Approved.
- (e) Failure to Submit Required Schedules. If the Design-Builder fails to provide an approvable Critical Path Schedule or monthly Progress Update, as required herein, and in addition to any other rights and remedies in favor of HTA arising out of such failure, the Design-Builder shall have no right to receive Progress Payments or any other payments under the Contract until such time as Design-Builder has prepared and HTA has Approved the Critical Path Schedule. Any failure or delay in the submittal or Approval of a Critical Path Schedule or monthly Progress Update shall not be the basis for any extension in Contract Time.
- (f) Changes to Critical Path Schedule. After HTA's Approval of the Critical Path Schedule, any additions, deletions, and other changes to the schedule by the Design-Builder shall be subject to the Approval of HTA. All Approved changes to any activity on the Critical Path Schedule, including without limitation changes arising out of delays, shall be included in the next monthly Progress Update. No new activities in the construction schedule will be permitted without HTA's consent after Approval of the Critical Path Schedule. Additional activities that extend or change the Critical Path Schedule that were or should have been recognizable when the Critical Path Schedule was submitted, will not be allowed. If any changes are pending, they shall be included in the Impacted Schedule.
- (g) Supplementary Information. The Design-Builder shall provide such supplementary written information with its submittals as may be requested by HTA to adequately evaluate the Critical Path Schedule and the plan of the Work.
- (h) Coordination with Schedule of Values. The Design-Builder shall coordinate the Critical Path Schedule with the Schedule of Values, as set forth in the Contract Documents.

Section 3.05 Scheduling of Design and Construction.

- (a) Progression of the Work. The Design-Builder shall design and construct the Work in accordance with the Critical Path Schedule, as Approved by HTA, and shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines and in accordance with the Critical Path Schedule, including furnishing such employees, materials, facilities and equipment, engaging in such workarounds and/or resequencing of the Work, and working such hours, extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such Completion Deadlines, all at Design-Builder's own cost except as otherwise specifically provided in Article X.
- (b) Float. All Float contained in the Critical Path Schedule or generated thereafter shall be considered a Project resource available to either Party or both Parties as needed to achieve schedule milestones, interim completion dates, and/or Completion Deadlines. All Float shall be shown as such in the Critical Path Schedule on each affected schedule path. Identification of (or

failure to identify) Float on the schedule shall be considered by HTA in determining whether to approve the overall schedule. Once identified, the Design-Builder shall monitor, account for, and maintain Float in accordance with critical path methodology.

Section 3.06 No Time Extensions. Except for Excusable Delays as specifically provided in Article X hereof, HTA shall have no obligation to extend a Completion Deadline and the Design-Builder shall not be relieved for any reason of any Completion Deadline.

Section 3.07 Recovery Schedule.

- (a) Obligation to Prepare. If at any time the Critical Path reflects seven (7) or a greater negative number of calendar days of total Float, then the Design-Builder, within ten (10) calendar days after first becoming aware of such schedule delay, shall prepare and submit to HTA for review and approval a Recovery Schedule demonstrating the Design-Builder's proposed plan to regain lost schedule and progress, to minimize the impact of delay events, and to achieve the original Milestones and Completion Deadlines, to the maximum extent possible, in accordance with this Contract. HTA shall notify the Design-Builder within ten (10) calendar days after receipt of each such proposed Recovery Schedule whether the schedule is Approved or rejected. Within five (5) calendar days after HTA's rejection of the proposed Recovery Schedule, the Design-Builder shall resubmit a revised Recovery Schedule addressing HTA's comments. When HTA Approves the Design-Builder's Recovery Schedule, the Design-Builder shall, within five (5) calendar days after HTA's Approval, incorporate and fully include such schedule into an updated Critical Path Schedule.
- (b) Design-Builder Costs. All costs incurred by the Design-Builder in preparing, implementing, and achieving a Recovery Schedule shall be borne by the Design-Builder and shall not result in a change to the Contract Price, except to the extent that a Change in the Contract Price is otherwise permitted in accordance with Article X.
- (c) Delay in Recovery Schedule. In the event that the Design-Builder fails to provide an approvable Recovery Schedule within ten (10) Days as required by subsection (a) hereof, HTA may withhold all or a portion of the Design-Builder's Progress Payment for that month, in HTA's discretion, until such time as the Design-Builder has submitted an approvable Recovery Schedule.

ARTICLE IV. DESIGN PROCESS AND REQUIREMENTS

Section 4.01 Scope of Design Services and Responsibilities. The Design-Builder shall be responsible for developing, providing, and completing all Preliminary Engineering Plans and Design Documents for the Project, as required by and described in the Contract Documents. The responsibilities of the Design-Builder shall include design management (which shall include coordination with Utility Owners, Government Entities, and other third parties), the development and implementation of design procedures, the development and conducting of a design process, participation in the Design Review Process, the preparation of all drawings and Materials necessary to complete the Design Documents, and the delivery of signed and sealed Design Documents ready for construction. The Design-Builder shall construct the Work in accordance with the Design Documents and Construction Documents.

Section 4.02 Notice to Proceed with Design Work. The Design Work shall commence upon the issuance of the NTP. The Design-Builder shall not proceed with any Design Work required under this Contract without a written NTP from HTA. Any Work performed or expenses incurred by the Design-Builder prior to the NTP Date shall be entirely at the Design-Builder's risk.

Section 4.03 Overall Design Responsibility. The Design-Builder shall provide the Engineer of Record, shall supervise and direct design performance using its best skill and following professional engineering practices, and shall be responsible for selecting the means of performance. The Design-Builder shall be responsible for the acts and omissions of the Designer and all other Design-Builder-Related Entities, including all employees, agents, and Subcontractors.

Section 4.04 Design Organization; Professional Licensing Laws.

- (a) Requirements Regarding Organization. The Design-Builder shall use the Designer identified in its Proposal, and the designated lead engineer/designer or Design Manager shall be the Engineer of Record. The Design-Builder shall not change the Designer without the prior written Approval of HTA.
- (b) Professional Licensing Laws. All design and engineering Work furnished by Design-Builder shall be performed by or under the supervision of persons licensed to practice architecture, landscape architecture, engineering, or surveying (as applicable) in the State of California, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared by them in accordance with the normal standard of care of the industry. HTA will not pay for or receive any design services that are in violation of any professional licensing laws.

Section 4.05 Review and Corrections; Notice of Defects.

- (a) Reviews and Corrections. The Design-Builder shall be fully responsible for correcting all errors, omissions, inconsistencies, and other Defects in the Preliminary Engineering Plans, Design Documents, and Construction Documents at its own cost and expense, and shall not be entitled to an increase in the Contract Price or an extension of the Contract Time by reason of any such correction.
- (b) Notice of Defects. If the Design-Builder learns of any actual or potential Defect in the Work provided under this Contract, or any problem associated with the results of the performance of the Work, or of any nonconformance with a provision of the Contract Documents or of Federal, State, or local law, the Design-Builder shall inform HTA in writing, within three (3) Days (without impacting the Project Schedule) after learning of such Defect, problem or nonconformance, with a full description of the Defect, problem, or nonconformance and the Design-Builder's recommended remedial action.

Section 4.06 Design, etc. Document Review.

(a) Required Submittals and Reviews.

- (i) General Requirements for Submittals. The Design-Builder shall furnish the Design Documents, Construction Documents, Working Plans/Shop Drawings, and As-Built Plans for review in accordance with this Article; shall obtain HTA's Approval in writing for any deviations from the Contract Documents, and shall obtain HTA's Approval of the Final Design Documents.
- (ii) Formal Submittals. The Design-Builder shall make formal design submittals to HTA at thirty percent (30%) completion, sixty percent (60%) completion, and ninety percent (90%) completion, and may make design submittals at different or additional levels of completion upon request of the Design-Builder and agreement of HTA. The Design-Builder shall also submit approved Plan Check Construction Drawings to HTA. The Design-Builder shall provide a schedule for design submittals to HTA on the Preliminary Critical Path, which shall reasonably distribute the timing of the design submittals in order to provide an even workflow for HTA reviewers and to otherwise facilitate review by HTA in accordance with this Section. The Design-Builder shall follow the submittal schedule, as Approved and/or modified by HTA, for all submittals under this Article.
- (iii) Deviations. In the event a Design submittal includes a deviation, the Design-Builder shall specifically identify that deviation in its submittal and request HTA's Approval therein. The Design-Builder shall have the burden of demonstrating to the satisfaction of HTA that the deviation sought constitutes sound and safe engineering consistent with good industry practice and will fully comply with HTA's applicable safety standards and criteria. HTA shall determine, in its sole discretion, whether to Approve or reject a requested deviation, and its decision shall be final and not subject to the dispute resolution process in this Contract. A deviation may not be implemented by the Design-Builder unless that deviation has been Approved in writing by HTA.

(b) Review of Submittals; Revisions.

- (i) Review by HTA. HTA will review each of the formal design submittals described in Section 4.06, as well as other submittals from the Design-Builder, hold meetings with the Design-Builder on the design submittals, and return each such submittal with one of the following notations:
 - 1) Released for Construction;
 - 2) Request for Additional Information or Clarification;
 - 3) Rejected: Revise and Resubmit; or
 - 4) Record Only.
- (ii) Design-Builder Revisions. In the event a submittal is returned with "Released for Construction", the Design-Builder may proceed with that Work on the basis of such submittal. In the event a submittal is returned with the notation "Request for Additional Information or Clarification", the Design-Builder shall promptly address the issue/comments raised, and shall make the required changes or modifications or supply the required additional information and return the submittal to HTA. In the event a submittal is returned with "Rejected: Revise and Resubmit", the Design-Builder shall promptly prepare a new submittal and provide it to HTA.

The Design-Builder shall not be granted an extension in Contract Time as a consequence of submittals being rejected or being returned with comments or requests for additional information or clarifications. The mark "Record Only" means the submittal was not reviewed for Approval and was received for information only.

- (c) Notifications. The Design-Builder shall notify HTA in writing after receipt of any comments on submittals if the Design-Builder believes incorporation of any comments would render the Preliminary Engineering Plans, Design Documents, Construction Documents, or any other Contract Documents erroneous, defective, or Deficient in any respect or would otherwise adversely affect in any manner the design or construction of the Project or the Project Schedule.
- (d) Response to Comments. The Design-Builder shall be responsible for implementing the Design Review process described in this Section and the Contract Documents. In implementing that process, the Design-Builder shall respond in writing to comments received and make modifications to the Preliminary Engineering Plans, Design Documents, and other submittals based on the comments. If the Design-Builder determines that modifications are not required in response to a particular comment, it shall promptly notify HTA and provide the reasons for its determination.
- (e) Time Requirements. Decisions by HTA on design approvals, requests for deviations, design exceptions, and related matters will be made within fourteen (14) Days after the submittal of proposals/documents by the Design-Builder with all required information, except for design exceptions that require Third Party approval.
- (f) Design-Builder Responsibility. Review of the Design-Builder's Preliminary Engineering Plans, Design Documents, and other submittals by HTA or any other Person under this Section (including the Release for Construction of specific submittals) shall not relieve the Design-Builder of any responsibility for such documents and submittals, including all dimensions and details therein. The Design-Builder shall remain responsible for the agreement and conformity of its designs with the Contract Documents, for correcting any Deficiencies in any Design Documents (including design submittals Released for Construction), and for conformity of the completed Work with the Technical Specifications and other Contract Documents.
- (g) Third Party Reviews. The Design-Builder, in consultation with HTA, shall also be responsible for coordinating with and conducting all design reviews required by third parties, in accordance with the applicable third party agreement or other agreements. The Design Builder shall bear all cost and schedule risk associated with such third party reviews.
- (h) No Changes. The Design-Builder's participation in the design review process in this Section, including the time and cost incurred in addressing comments received and preparing revisions to submittals, shall not be the basis for any increase in Contract Time or Contract Price, except in the case of HTA-Caused Delays as defined herein.

Section 4.07 Final Design Documents. The Design-Builder shall construct the Project in accordance with the Final Design Documents and the Construction Documents. The Final Design Documents may be changed only with prior written Approval by HTA.

Section 4.08 Ownership of Design Documents and Construction Documents. The Final Design Documents shall become the property of HTA upon preparation. The Construction Documents shall become the property of HTA upon delivery to HTA. Other documents prepared or obtained by Design-Builder or any Design-Builder-Related Entity in connection with the performance of its obligations under the Contract, including studies, manuals, As-Built Drawings and As-Built Plans, technical and other reports and the like, shall become the property of HTA upon the Design-Builder's preparation or receipt thereof. Originals of all Final Design Documents and Construction Documents and copies of such other documents described above shall be furnished to HTA upon preparation or receipt thereof by the Design-Builder. The Design-Builder shall maintain all other documents described in this Section in accordance with Section 18.03 hereof and shall deliver copies to HTA as required by the Contract Documents, or upon request if not otherwise required to be provided, and shall deliver an indexed set to HTA as a condition on Final Acceptance.

ARTICLE V. CONSTRUCTION PROCESS AND REQUIREMENTS

Section 5.01 Scope of Construction Work and Responsibilities. The Design-Builder shall be responsible for performing all Construction Work and for furnishing all Materials, Equipment, tools, and labor of every kind required for the Construction Work, as required by the Contract Documents, and for constructing and completing the Work in a skillful, safe, and professional manner on or before the Completion Deadlines specified in Section 3.03 hereof and the Milestone dates in the Critical Path Schedule.

Section 5.02 Commencement of Construction. The Design-Builder shall begin the Construction Work upon receipt of the NTP, subject to satisfaction of each of the pre-conditions set forth in Section 5.03. The Design-Builder shall proceed with the Construction Work in accordance with the Critical Path Schedule.

Section 5.03 Pre-conditions to Start of Construction.

- (a) Pre-Conditions. The Design-Builder shall not start Construction Work (or recommence Construction Work following any suspension) of any portion of the Work prior to occurrence of all the following events except with the prior written approval of HTA in its sole discretion. The Design-Builder shall commence Construction Work after occurrence of all the following events:
 - (i) HTA has Approved the Critical Path Schedule and each of the plans and programs required by the Contract Documents;
 - (ii) All requirements of the Quality Management Plan and the Injury and Illness Prevention Program have been met;
 - (iii) Except as otherwise provided in Section 3.01, Early Start of Construction, HTA has reviewed and Released for Construction the applicable Final Design Documents and Construction Documents relating to such portion of the Project;
 - (iv) All Governmental Approvals and Third Party approvals necessary for construction of the applicable portion of the Project have been obtained and all conditions of such Governmental

Approvals which are pre-conditions to the commencement of such construction have been performed;

- (v) All safety procedures and plans required for Construction Work have been completed by the Design-Builder to the satisfaction of HTA, and the Design-Builder has delivered all notices required by the Contract Documents to be delivered prior to commencement of construction on such portion of the Project.
- (vi) The Designer has conducted its design QC checks throughout the design process in compliance with the Quality Management Plan and certifies in writing that the design is complete to the Release for Construction level, checked and ready to be released for construction.
- (vii) The QA/QC Manager has signed the title sheet for the Drawings, certifying to the following:
 - 1) Design checks have been completed;
 - 2) Work conforms to Contract Document requirements;
 - 3) Any deviations or design exceptions have been approved in writing by HTA;
 - 4) Design QC activities followed the Design-Builder's Quality Management Plan; and
 - 5) All outstanding issues or comments from Design Reviews have been resolved.
- (viii) The Engineer of Record has signed and stamped/sealed all Drawings prepared under their direction, and the Design Manager has signed the title sheet to the Drawings. For those Drawings and documents included in the submittal that are prepared by a manufacturer or Supplier or other Person not under his/her direct supervision, the Engineer of Record shall attach a signed and dated statement that indicates the design shown on the sheet or document conforms to the overall design and Contract Document requirements approving such drawings and documents.
- (ix) The Design-Builder has signed the title sheet approving the Design Plans verifying the following:
 - 1) Design has undergone constructability review and it is constructible as represented;
 - 2) The Design Plans, Drawings, and related documents for the portion of the Project to be constructed are complete and checked; and
 - 3) The design and Drawings for temporary traffic control, temporary erosion control, and environmental measures applicable to the Work are complete.
- (x) HTA has provided review and comment regarding the Design Plans, Drawings, applicable traffic control plans, temporary erosion control measures, and environmental requirements, and outstanding issues have been resolved; and
- (xi) Any non-conformance of the design to the Project has been addressed and resolved to the satisfaction of HTA.

As used in this Section 3.03(a), the term "Construction" specifically excludes potholing and geotechnical investigations incidental to Design Work, mobilization, site security, and establishment of work yard(s) and storage sites.

- (b) Early Start of Construction. Notwithstanding Section 3.03(a), the Design-Builder may start construction of specific elements of the Work prior to completion of Final Design if HTA determines, in its discretion, that its comments regarding those specific elements of the Work in connection with the sixty percent (60%) Design and Release for Construction submittals have been satisfactorily addressed. If the Design-Builder elects to start any Construction prior to Final Design approval, the Design-Builder shall be obligated at its own expense to correct any Work not conforming to the Final Design Documents and Construction Documents.

Section 5.04 Workmanship and Materials.

- (a) General Requirement. All Work performed and all Materials furnished shall be in accordance with the lines, grades, cross sections, dimensions, and Material requirements, including tolerances, shown in the Design Plans or indicated in the Technical Specifications or other Contract Documents.
- (b) Workmanship. The Design-Builder shall perform all Work in a skillful and workmanlike manner, using workers with sufficient skill and experience to perform the Work assigned.
- (c) New Materials. The Design-Builder shall be responsible for assuring that all materials, equipment, and products incorporated into the work are new and are of the grade and quality specified in the Final Design Documents and Construction Documents.
- (d) Conforming Materials; Handling. The Design-Builder shall be responsible for assuring only Materials conforming to the requirements of the Final Design Documents and Construction Documents are incorporated in the Work. All Materials shall be manufactured, handled, and incorporated so as to ensure completed Work in accordance with this Section, the Final Design Documents, and the other Contract Documents. Materials shall be transported, handled, and stored in a manner, which will ensure the preservation of their quality, appearance, and fitness for the Work. All Materials shall be stored in a manner to facilitate inspection by HTA.

Section 5.05 Goods.

- (a) General. The Design-Builder shall furnish all Goods required to complete the Work, except any Goods designated to be furnished by HTA. Goods incorporated into the Work shall be new, of good quality, of the grade specified for the purpose intended, and shall have the specified capacity, functionality, and features. HTA may reject Goods not conforming to the requirements of this Contract.
- (b) References to Trade Names, Makes, or Catalog Numbers. Unless otherwise specifically stated, reference to Goods or patented processes by trade names, make, or catalog number shall be regarded only as a means of establishing a standard of quality or performance, such references shall not be construed as limiting competition. Subject to prior written consent of HTA, which

consent shall be in the sole discretion of HTA, the Design-Builder may use any Goods that are equivalent to those named.

- (c) Preservation and Inspection. The Design-Builder shall transport, handle, and store all Goods purchased under the Contract in a manner that facilitates inspection and ensures the preservation of its quality, appearance, and fitness for the Work, and shall be stored in a manner that facilitates inspection.
- (d) Risk of Loss. The Design-Builder shall bear the full risk of loss of any and all Goods until such Goods are Approved by HTA pursuant to the terms of this Contract.

Section 5.06 Control and Coordination of Work.

The Design-Builder shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, traffic control, Quality Assurance and Quality Control, and Site safety, and shall be solely responsible for coordinating all portions of the Work in accordance with the Contract Documents. The Design-Builder shall ensure that all of its activities and the activities of all Design-Builder-Related Entities are undertaken in a manner that will minimize the effect on HTA operations, the surrounding property, and the public to the maximum extent practicable.

Section 5.07 Safety and Site Security.

- (a) Safety.
 - (i) Overall Responsibility. The Design-Builder shall be responsible for safety at the Site and shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees and consultants of HTA, visitors to the Site, and members of the public who may be affected by the Work. The Design-Builder shall have full responsibility for maintaining conditions that are free from recognized hazards that are likely to cause physical harm to employees and other persons on the Site. The Design-Builder shall be responsible for the discovery and correction of any unsafe conditions at the Site or relating to the Work. The Design-Builder shall also:
 - 1) Establish within thirty (30) calendar days after the NTP, implement and maintain an effective Injury and Illness Prevention Program in accordance with applicable law.
 - 2) Develop and implement a Site Security and Maintenance Plan within thirty (30) calendar days after the NTP.
 - 3) Keep all safety related records updated and accurate, and ensure that its Subcontractors' records are similarly maintained.
 - 4) Comply with other applicable provisions of Title 29 of the Code of Federal Regulations (CFR),

as well as all other federal, state, and local regulations, statutes, and codes applicable to its operations. Strict compliance with any applicable regulations, as determined by HTA or its designee, shall be considered with the original scope of this Contract and shall not delay the schedule for performance of the Work by the Design-Builder, nor shall it be relied upon to form the basis of any claims. Compliance with determinations by HTA or its designee shall not relieve the Design-Builder from other obligations imposed by Government Rule nor serve as the basis of a Change Request to increase the cost of the Work.

- 5) Comply with all work safety requirements in the Final Design Documents, Construction Documents, and other Contract Documents, which shall be considered within the original scope of this Contract and shall not delay the schedule for performance of Work by the Design-Builder, nor shall it be relied upon to form the basis of any claim.
 - 6) Assure that working areas utilized by the Design-Builder to perform Work during the hours of darkness, if any, are lighted to conform to the minimum illumination intensities established by applicable law and regulations.
- (ii) Compliance with State and Federal Law. Where the State and Federal regulations have differing requirements, the Design-Builder shall comply with that which is more stringent as determined by HTA.
- (b) Site Security. The Design-Builder shall secure the Work area(s) from public access and non-essential personnel during performance of the Work.

Section 5.08 Project Site, Access.

- (a) Project Site. Design-Builder acknowledges that the Project will be constructed at HTA's administrative and operational facility, and that normal operations will be occurring during the performance of the Work. Design-Builder shall be responsible to minimize disruption to HTA's normal operations. Any planned disruption to HTA's normal operations must be coordinated with HTA at least seven (7) calendar days prior to the planned start date and time of the disruption, and cannot commence prior to receiving written approval by HTA. HTA may postpone or delay the planned disruption within twenty four (24) hours prior to the planned start date and time of the disruption.
- (b) Site Boundaries. The boundaries of HTA's facility to be used for the Project will be surveyed and designated by HTA. If the Design-Builder loses or disturbs any boundary references and HTA needs to replace them, such replacement shall be at the sole expense of the Design-Builder.

Section 5.09 Verifications.

- (a) Conformance with Plans and Variations. All Work upon completion shall conform to the Contract Documents. The Design-Builder shall report any variation to HTA in writing, and may request approval of a variation from HTA. If the Design-Builder fails to report or does not obtain approval of variations by HTA, the Design-Builder shall correct the Work, and/or replace such Work to comply with the requirements of this Section at its own expense.

- (b) Verification of Governing Dimensions. Before commencing the Work, the Design-Builder shall verify all governing dimensions at the Site and shall examine all adjoining Work on which its Work is in any way dependent, according to the Contract Documents. The Design-Builder shall notify HTA of any defective or non-conforming governing and adjoining dimensions that are observed before the Design-Builder begins the part of the Work.

Section 5.10 Temporary Facilities.

- (a) Personnel and Public Safety. The Design-Builder shall provide and maintain such lights, protective devices, barricades, and message and warning signs as are necessary for the safety of personnel, HTA staff, and the public, or as otherwise required by HTA. The Design-Builder shall be responsible for the timely erection, maintenance, repair, replacement, and removal of such safeguards, without specific instructions from HTA.
- (b) Signs and Billboards. No signs, billboards, or any types of advertising are permitted on, about or adjacent to the Site, or on any structure on the Site, except by prior written Approval by HTA.
- (c) Facilities and Services. The Design-Builder shall determine the type of temporary facilities and temporary Utility services required, and shall make all arrangements with Utility Owners and Governmental Entities to secure such services. All costs incurred shall be at the sole expense of the Design-Builder. All temporary services shall be furnished, installed, connected and maintained by the Design-Builder in a manner satisfactory to HTA, and shall be removed by the Design-Builder in like manner at its sole expense prior to Final Acceptance, except for such temporary facilities as may be specified to remain in place.
- (d) Sanitary Facilities. The Design-Builder shall provide and maintain adequate sanitary convenience of an approvable type for the use of persons employed on the Site. The Design-Builder shall properly maintain these conveniences at all times and shall strictly enforce their use. Upon completion of the Work, the Design-Builder shall remove such conveniences from the Site at its sole expense, leaving the Site clean and free from nuisance.

Section 5.11 Inspection and Testing.

- (a) Design-Builder Inspection and Testing. The Design-Builder shall perform the inspection, sampling, and testing specified as its responsibility in the Contract Documents and its Quality Management Plan or as may otherwise be necessary for the Design-Builder to comply with its obligations under the Contract Documents.
- (b) Oversight and Inspection and Testing by HTA and Others.
 - (i) Right to Inspect and Access. All Materials and each part or detail of the Work shall be subject to oversight, inspection, and verification testing by HTA and its designee. HTA and any such designee shall, at all times during the Contract Term, have access to the Work at the Site, as well as to all documents on which the Work is based.

- (ii) *Ability to Proceed*. At all points in performance of the Work at which specific inspections or approvals by HTA are required by the Quality Management Plan, the Design-Builder shall not proceed beyond that point until HTA has made such inspection or authorized the Design-Builder to proceed without such inspection, which authorization shall be in writing. HTA shall conduct such inspection within forty-eight (48) hours after written notice and request for inspection by Design-Builder. Any such authorization to proceed without an inspection shall not relieve in any way the Design-Builder of its obligations and responsibilities for the Work under this Contract.
- (c) **Obligation to Uncover Finished Work**.
- (i) *Notice*. The Design-Builder shall notify HTA of any part of the Work that is about to be covered and offer a full and adequate opportunity to HTA to inspect and test such part of the Work before it is covered. At all times before Final Acceptance, the Design-Builder shall remove or uncover such portions of the finished construction Work as directed by HTA. After examination by HTA or its consultants, the Design-Builder shall restore the Work to the standard required by the Contract Documents.
 - (ii) *Design-Builder Responsibility*. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at the Design-Builder's cost and the Design-Builder shall not be entitled to any extension in Contract Time. Furthermore, any Work done or Materials used without adequate notice to and opportunity for prior inspection by HTA or without inspection in accordance with the Contract Documents, may be ordered uncovered, removed or restored at the Design-Builder's cost and without a time extension, even if the Work proves Approvable after uncovering. Except with respect to Work done or Materials used as described in the foregoing sentence, if Work exposed or examined under this Section is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path Schedule from uncovering, removing, and restoring Work may be an HTA-Caused Delay, and the Design-Builder may be entitled to a Change for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby, subject to the requirements of Article X.
- (d) *HTA Inspection and Testing*. HTA or its designee may perform such inspection, sampling, and testing of any elements of the Work as HTA deems to be necessary and appropriate. All Materials and Work, including the preparation, fabrication, or manufacture of the Materials to be used, shall be subject to inspection and testing by HTA or its designee. HTA and its agents and designees shall be allowed full access to the Work and shall be furnished with necessary information and assistance by the Design-Builder to make complete and detailed inspections. Inspections shall include, but not be limited to, the Design-Builder's compliance with applicable safety requirements. Any HTA inspections and tests are for the sole benefit of HTA and do not constitute any of the following:
- (i) Relief of responsibility for providing adequate QC measures;
 - (ii) Relief of responsibility for damage to or loss of the Materials before Final Acceptance;
 - (iii) Implication of Final Acceptance; or
 - (iv) Alteration or amendment of the continuing rights of HTA after Final Acceptance of the

completed Work.

Section 5.12 Oversight, Testing, Audits, Approvals and Related HTA Actions

- (a) Oversight and Approval. The oversight, testing, spot checks, audits, and Approvals conducted by HTA, its designee, or other Persons do not constitute Approval of the Materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. HTA may request remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Work into compliance with the Contract Documents or Final Design Documents at any time prior to Final Acceptance, whether or not previous oversight, tests, spot checks, audits, or Approvals were conducted by HTA, its designee, or other persons.
- (b) Access to Work Areas. HTA and its designee shall have access wherever Work is performed under this Contract for purposes of conducting audits, inspections, and tests to verify compliance to Contract Document requirements. This access includes onsite and offsite work areas and work areas of Subcontractors, Suppliers, or any other Design-BUILDER- Related Entity.
- (c) No Estoppel. The Design-BUILDER, or any Design-BUILDER-Related Entity, shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed, or Approvals made, by HTA, its designee, or any other Person, or any failure of HTA, its designee, or any Person to take such action. HTA shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from (1) showing the true amount and character of the Work performed and Materials furnished by the Design-BUILDER; (2) showing that the Work or Materials do not conform in fact to the requirements of the Contract; or (3) recovering from the Design-BUILDER and its Surety such damages as HTA may sustain by reason of the Design-BUILDER's failure to comply with the terms of the Contract.

Section 5.13 Nonconforming or Deficient Work

- (a) Rejection, Removal and Replacement of Work. The Design-BUILDER shall remove and replace all Nonconforming or Deficient Work rejected by HTA so as to conform to the requirements of the Contract Documents, at the Design-BUILDER's cost and without an extension in Contract Time. The Design-BUILDER shall also promptly take all action necessary to prevent similar Deficiencies from occurring in the future. The fact that HTA may not have discovered the Nonconforming Work shall not constitute an Approval of such Nonconforming Work. If the Design-BUILDER fails to correct any Nonconforming Work within ten (10) Business Days of receipt of notice from HTA requesting correction, or if such Nonconforming Work cannot be corrected within ten (10) Days, and the Design-BUILDER fails to (1) provide to HTA a schedule for correcting any such Nonconforming work Approvable to HTA within such ten-day period, (2) commence such corrective Work within such ten-day period; and (3) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then HTA may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any amounts due or to become due the Design-BUILDER and/or obtain reimbursement from the Design-BUILDER for such cost.

- (b) HTA Remedies for Nonconforming or Deficient Work. If any Work provided by the Design-Builder is Nonconforming or Deficient, HTA will provide written notice to Design-Builder of such Deficiencies, and may thereafter do any or all of the following:
 - (i) Require the Design-Builder to promptly segregate and remove rejected Work from the Site at its own expense and without any extension of Contract Time or require the Design-Builder re-perform such Work and repair or replace the Work, Goods, Material, or other items at the Design-Builder's own expense, the Design-Builder may propose the remedy for Nonconforming or Deficient Work, subject to reasonable approval of HTA.
 - (ii) Withhold or deduct from payments otherwise due to Design-Builder under this Contract, as provided in Article XVII hereof;
 - (iii) Have such Work performed and Goods provided by others at the sole expense of the Design-Builder.
 - (iv) Terminate the Contract for default in accordance with Article XVI and obtain the remedies provided for therein.
- (c) Agreement to Approve Nonconforming or Deficient Work. If HTA agrees to Approve any Nonconforming Work without requiring it to be fully corrected, HTA shall be entitled to reimbursement in accordance with Section 11.07 hereof. The Design-Builder acknowledges and agrees that HTA shall have sole discretion regarding Approval or rejection of Nonconforming Work and sole discretion with regard to the amount payable in connection therewith.

Section 5.14 Obligation to Maintain and Repair.

- (a) Protection of Existing Structures and Equipment. The Design-Builder shall protect existing structures, roadway, Equipment and vegetation within and adjacent to the Site and shall exercise due caution to avoid damage to such structures and Equipment.
- (b) Maintenance and Repair Liability. The Design-Builder shall, at no additional cost to HTA, maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Construction Documents, Materials, Equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project) that is damaged or injured prior to Final Acceptance of the Work. The Design-Builder shall also have full responsibility for rebuilding, repairing and restoring all other property at the Site whether owned by the Design-Builder, HTA, or any other Person. Where necessary to protect the Work or Materials from damage, the Design-Builder shall, at the Design-Builder's expense, erect such temporary structures as may be necessary to protect the Work or materials from damage and ensure a safe environment.
- (c) Storage Upon Suspension. The suspension of the Work, regardless of cause, shall not relieve the Design-Builder of the responsibility for the Work and Materials as herein specified. If ordered by HTA, the Design-Builder shall, at the Design-Builder's expense, properly store Materials that

have been partially paid for by HTA, and HTA shall at all times be entitled to the possession of the Materials.

Section 5.15 Site Maintenance.

- (a) General Responsibility. The Design-Builder shall have responsibility for maintenance of the entire Project during Design and Construction Work, in accordance with this Section and the other Contract Documents, until the issuance of the Certificate of Final Acceptance. The maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate Equipment and forces such that Project area public roads, rights-of-way, and structures are kept in satisfactory condition at all times. The Design-Builder shall correct or repair all damage attributable to Design-Builder's operations. All costs of maintenance Work during and after Construction Work and until Final Acceptance are included in the Contract Price and additional amounts for such Work will not be paid.
- (b) Plans and Reports. The Design-Builder shall include in the Site Security and Maintenance Plan the strategy for the implementation, coordination, scheduling of proposed routines, and monitoring of maintenance activities during the Project. The Design-Builder shall also provide monthly maintenance reports to HTA.
- (c) Protection Against Damage or Injury. Until Final Acceptance of the Project, the Design-Builder shall have the charge and care of the Work and shall take every precaution against damage or injury to any part thereof, whether arising from the execution or the non- execution of the Work. The Design-Builder shall rebuild, repair, restore, and make good all damages or injuries to any portion of the Work occasioned by the above causes before Final Acceptance, and shall bear all expense thereof.
- (d) Clean Up. Throughout all phases of construction and until Final Acceptance of the Work, Design-Builder shall keep the Site, including storage and laydown areas used by the Design-Builder, clean and free from rubbish, graffiti, and debris. Before completing the Work, the Design-Builder shall remove from the Site any rubbish, tools, scaffolding, and Goods that are not the property of HTA. Upon completing the Work, the Design-Builder shall leave the Site in a clean, neat, and orderly condition satisfactory to HTA.
- (e) Dust Abatement. The Design-Builder shall abate dust nuisance by employing best management practices, in accordance with the applicable provisions in the Technical Specifications.
- (f) Spillage on Haul Routes. The Design-Builder shall take care to prevent spillage on haul routes. The Design-Builder shall remove any such spillage immediately and clean the area to the satisfaction of HTA.

Section 5.16 Quality Control Requirements.

- (a) Quality Management Plan. The Design-Builder shall be responsible for developing and implementing a Quality Management Plan for the Project that complies with the provisions of this Section. The Design-Builder shall submit its Quality Management Plan to HTA within thirty

(30) calendar days after issuance of the NTP, for review and Approval by HTA.

- (b) Quality Organization. The Design-Builder shall establish and maintain, either directly or through a quality assurance and control Subcontractor, an effective design and construction quality organization with the following elements, authority, and responsibility:
- (i) The quality organization shall designate an individual to serve as QA/QC Manager. The Quality Manager shall be responsible for all quality assurance issues, quality control, documentation, and reporting;
 - (ii) The quality organization shall exercise quality control over all phases of the Work from initiation of design through completion of construction Work. The organization shall also control the quality of Equipment and Materials to be supplied under this Contract;
 - (iii) The quality organization shall have the authority and responsibility for reliability, quality control, inspection planning, establishment of the quality control system, and acceptance and rejection of design documents, Materials, and manufactured articles in the construction of the Work and the production of Equipment and Materials to be provided under this Contract;
 - (iv) The quality organization shall verify inspection operation instructions to ascertain that supplies, Equipment, and Materials meet all prescribed requirements;
 - (v) The quality organization shall endeavor to detect and promptly assure correction of any conditions that are not in compliance with the Contract or Final Design Documents. These conditions may occur in designs, purchases, manufacture, construction, installation, tests, or operations that culminate in defective supplies, services, facilities, technical data, or standards.
 - (vi) The quality organization shall provide a system for final inspection and testing of each element of the completed Work. The system shall measure the overall quality of each completed element of the Work, and shall include procedures for identification, segregation, and disposition of non-conforming Materials; and
 - (vii) The quality organization shall establish and maintain a quality control audit program.
- (c) Standards and Facilities. The following standards and facilities shall be included in the Design-Builder's Quality Control process:
- (i) The Design-Builder shall maintain Drawings, product data, and other documentation that completely describe qualified supplies, Materials, and Equipment that meet all of the requirements of this Contract. The quality organization shall verify, in accordance with the Quality Management Plan, that each element of the Work is constructed or manufactured in accordance with these controlled Drawings, data, procedures, and documentation;
 - (ii) The Design-Builder shall provide and maintain the necessary measuring and testing devices for use by the quality organization to verify that all Work conforms to all requirements of this Contract and Final Design Documents. These devices shall be calibrated at established periods

against certified measurement standards that have known, valid relationships to national standards; and

- (iii) The Design-Builder's measuring and testing devices shall be made available for use by HTA and other inspectors to verify that all Work conforms to all requirements of this Contract and Final Design Documents, provided that HTA may also conduct testing using their own equipment, and may verify all testing conducted by the Design-Builder. If necessary, the Design-Builder shall make available personnel to operate the devices and to verify their condition and accuracy.
- (d) Project Subcontractor and Supplier QA and QC. The Design-Builder shall require that each major Subcontractor and supplier maintain quality assurance and quality control programs for the Work it performs or the services and supplies it provides. Each such QA and QC program shall be submitted to the Design-Builder for review and approval.
- (e) Control of Purchases.
 - (i) The Design-Builder shall maintain quality control over the purchase of all Equipment, Materials, and components needed for the Work. The Design-Builder's quality organization shall inspect and test Materials provided by Subcontractors for conformance to the requirements of the Contract and Final Design Documents. Materials that have been inspected, tested, and approved shall be identified as approvable to the point of use in the manufacturing or assembly processes. Controls shall be established to prevent inadvertent use of nonconforming Materials; and
 - (ii) The Design-Builder shall verify that all applicable requirements of the Contract and Final Design Documents are properly included or referenced in purchase orders of supplies and Materials to be used in the Work.
- (f) Construction and Manufacturing Control.
 - (i) The Design-Builder shall require that all civil construction, basic production operations, and all other processing and fabricating, be performed under controlled conditions in accordance with the Quality Management Plan. Establishment of these controlled conditions shall be based on the documented Work instructions, adequate production equipment, and special working environments if necessary; and
 - (ii) Statistical analysis, tests, and other quality control procedures shall be used when appropriate in the Quality Assurance process.
- (g) Design-Builder Records. The Design-Builder shall be responsible for maintaining complete and accurate written records that provide objective evidence of performance of Quality Control activities by the Design-Builder in compliance with this Section. These records shall be submitted to HTA and Design-Builder shall maintain and keep available for inspection a complete set of records for a minimum of three (3) years after the later of the completion of all Work and Services by Design-Builder or the conclusion of any litigation related to the Project, whichever is

later in time.

- (h) Design-Builder Reports. The Design-Builder Quality Control organization shall include in its monthly report specific information on Quality Assurance and control issues and activities.
- (i) HTA Imposition of Plan. HTA reserves the right to require the Design-Builder to adopt and implement a Quality Management Plan or program developed by HTA, if HTA determines, following written notice and a reasonable opportunity to cure any material deficiency, that:
 - (i) The Quality Management Plan developed by the Design-Builder is not adequate to assure compliance with the requirements of this Section; or
 - (ii) The Design-Builder is failing to carry out its Quality Management Plan, or otherwise to implement the requirements of this Section, in a satisfactory manner. Any plan or program HTA develops shall conform to and not exceed the requirements of this Section.

Section 5.17 Relief from Maintenance Liability. With the exception of O&M Services provided under the Contract Documents, the Design-Builder shall be relieved of maintenance liability for the Site beginning on the Final Acceptance Date, subject to the limitations set forth in Section 12.05 hereof, and further subject to any Design-Builder maintenance obligations that arise from a Change Order.

Section 5.18 Title to Property. The Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all Materials, Goods, Equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for HTA for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such Materials, Goods, Equipment, tools, and supplies which shall have been delivered to the Site shall pass to HTA, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by HTA to the Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, the Design-Builder shall retain sole care, custody and control of such Materials, Goods, Equipment, tools, and supplies and shall exercise due care with respect thereto until Final Acceptance or until the Design-Builder is removed from the Project.

Section 5.19 Compliance With Local Requirements.

- (a) Compliance with Governmental Approvals and Local Requirements. The Design-Builder shall comply with the requirements of local agencies and cities applicable to the Work, including all Governmental Approvals and permits required for or associated with the performance of the Work.
- (b) Obtaining and Paying for Governmental Approvals and Permits. The Design-Builder shall be responsible for obtaining all Governmental Approvals and local permits that are necessary for the performance of the Work with the sole exception that the cost of all building permitting fees and plan review charged by local agencies or cities shall be reimbursable by HTA upon proper documentation by the Design-Builder. Fees that are not project specific, such as licensing fees and business licenses, are the responsibility of the Design-Builder. The Design-Builder shall comply with all conditions set forth in Governmental Approvals and all permit requirements

(whether obtained by the Design-Builder or by HTA). HTA shall only be responsible for the Governmental Approvals it obtains before the issuance of the NTP or for any other Governmental Approvals specifically identified as HTA's responsibility in the Contract Documents.

Section 5.20 Storm Water Pollution Prevention Plan. Prior to commencing any construction activities, the Design-Builder shall develop and submit to HTA a Storm Water Pollution Prevention Plan (SWPPP) that meets the applicable performance standards and other requirements set forth in the Contract Documents and Government Rules. The Design-Builder shall be responsible for obtaining any necessary Governmental Approvals for the SWPPP. The SWPPP shall be updated through amendment and submitted to HTA as needed during construction. The Design-Builder shall be responsible for assuring that all plans and specifications are consistent with the approved SWPPP, and that all storm water pollution control measures are implemented in accordance with the approved SWPPP. The Design-Builder shall also be responsible for assuring that the Site and all activities thereon are in compliance with any applicable State or local permits.

Section 5.21 Transportation And Traffic Management.

- (a) General Responsibility. The Design-Builder shall perform all Work necessary to meet the requirements for maintenance of traffic as set forth in this Section and the other Contract Documents, including providing for the safe and efficient movement of people, Goods, and services through and around the Project while minimizing negative impacts to residents, commuters, and businesses.
- (b) Transportation Management Plan. The Design-Builder shall develop, implement, and maintain a Transportation Management Plan for the construction staging and sequencing, in accordance with this Section and the other Contract Documents. The Design-Builder shall submit the Transportation Management Plan to HTA, for review and Approval, no later than sixty (60) calendar days after Notice to Proceed. The Plan shall be designed to minimize Project-related traffic delay, HTA operations interruption, and potential accidents, and shall include the following:
 - (i) Methods and frequency of inspection and maintenance of all traffic control throughout the Project area rights-of-way (ROW).
 - (ii) Procedures to identify and incorporate the needs of emergency service planners, law enforcement entities, and other related corridor users, including procedures to assure access for emergency service providers to all parts of the Site during an emergency.
 - (iii) Description of contact methods, personnel available, and response times for responses to conditions needing attention during off-hours.
 - (iv) Procedures for coordination and liaison with HTA's public information officer, to assure timely notification to the public regarding traffic management and maintenance issues.
 - (v) A Traffic Incident Management Plan for the management of traffic incidents and operations on

the Project.

- (vi) Procedures for coordination of traffic control activities with the managers of adjacent construction projects.
- (vii) Plans for the installation and maintenance of traffic signs and temporary signalization on and adjacent to the Site.
- (c) No Transfer of Responsibility. The Design-Builder agrees that neither the presence of HTA personnel or agents on the Site, nor instructions given by HTA personnel or agents regarding traffic control, will transfer responsibility for the traffic control to HTA or such agents.

Section 5.22 Night-Time Construction. If night-time construction activity is Approved, the Design-Builder shall assure that all Work is performed in accordance with applicable Governmental Approvals and that all lighting is directed away from residences and that lighting is shielded so that emission of light from the construction is minimized.

ARTICLE VI. UTILITY RELOCATION; HAZARDOUS MATERIALS; ENVIROMENTAL COMPLIANCE AND RELATED MATTERS

Section 6.01 Utility Responsibilities of Design Builder.

- (a) General. The Design-Builder will be responsible for carrying out Utility relocation and other Utility related work in accordance with this Section, and except as otherwise provided in this Section such Work shall be performed without any increase in Contract Price or extension in Contract Time.
- (b) Investigation. -- The Design-Builder shall, within sixty (60) calendar Days after the issuance of the NTP and prior to the start of Construction Work, shall be responsible for analyzing the Utility Information, contacting and making inquiries of Utility Owners, and performing surface inspections of the Site and such additional investigations as it deems appropriate to verify and supplement such information. If such inspection indicates the existence of Utilities not included in the Utility Information that are likely to be impacted by the Project, the Design-Builder shall notify HTA of the presence of such Utilities and provide a recommendation for their relocation or Protection in Place.
- (c) Responsibility for Tasks Relating to Utilities. The Design-Builder shall be responsible for the following: (1) the relocation or Protection in Place of Utilities identified in the Utility Information or discovered after the issuance of the NTP, unless otherwise directed by HTA pursuant to subsection (h) below; (2) coordinating with Utility Owners and performing all other administrative tasks related to the relocation or Protection in Place of Utilities; (3) any Incidental Utility Work necessary to complete the Work under the Contract; and (4) updating and maintaining the Utility Information.
- (d) Responsibility for Utility Related Costs.

- (i) Design-Builder Responsibility. Except as provided in Section 6.01(d)(ii), the Design-Builder shall be responsible for the cost of all the Utility-related investigation work described in Section 6.01(b) without an increase in the Contract Price or extension in Contract Time.
- (e) Multiple Relocations of the Same Utility. The Design-Builder shall endeavor to avoid multiple relocations of the same Utility, whether performed by the Utility Owner or the Design-Builder and based on the Utility Information or the Design-Builder's design and implementation of the Work. Accordingly, after a Utility has been relocated once in order to accommodate the Project, the Design-Builder shall be responsible for all costs incurred either by the Design-Builder or the Utility Owner in order to relocate the same Utility again to accommodate the Project. The Design-Builder shall reimburse HTA for all costs incurred by HTA for such subsequent relocation, and shall not receive any extension of any Completion Deadline or increase in the Contract Price on the basis of such subsequent relocation. The Design-Builder shall bear the burden of proving that the subsequent relocation cannot be avoided.
- (f) Minimization of Costs. In performing the Work, the Design-Builder shall take all reasonable steps to minimize costs to the Utility Owner that will be subject to reimbursement by HTA, to the extent practicable and otherwise consistent with the other requirements of the Contract Documents.
- (g) Inconsistency in Data. If there is any inconsistency between any two or more data sheets of the Utility Information, the most accurate of the indications will be used for purposes of this Article.
- (h) Reservation of Rights. HTA reserves the right to use other labor forces for the relocation and/or Protection in Place of any Utilities discovered after the issuance of the NTP, rather than having that work performed by the Design-Builder.

Section 6.02 Betterments.

- (a) Approval of Betterments. If a Utility Owner requests HTA to permit the Design-Builder to perform Betterments to the Work that were not indicated in the Contract Documents, HTA will approve such Betterments only if:
 - (i) Such Betterment is compatible with the Project;
 - (ii) The Utility Owner has agreed to reimburse HTA for all costs thereof;
 - (iii) The Utility Owner and Design-Builder have agreed to the price (e.g. lump sum, unit prices, or time and material cost basis) for such Betterment; and
 - (iv) It is feasible to separate the cost/pricing of the Betterment from that for any other Utility Work being performed by the Design-Builder. Any Betterment work pursuant to this Section shall not be considered a Change directed by HTA.
- (b) Betterment Pricing. The Design-Builder shall use its best efforts to negotiate a lump sum price or

unit prices for such Betterment work with the Utility Owner, in good faith. If Design-Builder and the Utility Owner are unable to agree on a lump sum price or unit prices, then HTA will direct Design-Builder to perform such Betterment work with compensation determined on a time and materials basis.

- (c) Increase in Scope. If any changes to the Utility Work for which the Design-Builder is responsible constitute Betterments that were not indicated in the Contract Documents, or which increase the scope of Betterments that were so indicated, then the Design-Builder shall be entitled to a Change with respect to any increase in Design-Builder's costs of performing the Work that is directly attributable to such change(s).
- (d) Decrease in Scope. If any changes to the Utility Work for which the Design-Builder is responsible are made that eliminate or reduce the cost of any Betterments that were indicated in the Contract Documents, thereby reducing the cost of the Work, then HTA shall be entitled to a Change reducing the total Contract Price to reflect the value of any reduction in the Work that is directly attributable to the reduction or elimination of such Betterment, in accordance with Article X hereof.
- (e) Utility Owner Performs Incidental Utility Work. If a Utility Owner performs any Incidental Utility Work that was originally included in the Design-Builder's Scope of Work, thereby reducing the Work to be performed by the Design-Builder, then HTA shall be entitled to a Change reducing the total Contract Price to reflect the value of any reduction in the Work that is directly attributable to the performance of such Work by the Utility Owner, in accordance with Article X hereof.

Section 6.03 Hazardous Materials Management and Related Safety Requirements.

- (a) Hazardous Materials Management Plan. The Design-Builder shall prepare and submit a Hazardous Materials Management Plan to HTA, for its review and Approval, within thirty (30) calendar days after issuance of the NTP. The Hazardous Materials Management Plan shall describe the most cost-effective approach to Hazardous Materials management that complies with applicable Environmental Laws, Governmental Approvals, Government Rules, and Third Party Agreements. The Hazardous Materials Management Plan shall address any contamination that is encountered, impacted, caused by, or occurring in connection with the Work, as well as the investigation and remediation of such contamination, both within and outside the ROW, including outside areas affected by Utility relocations. The Design-Builder shall comply with the procedures and requirements set forth in the Approved Hazardous Materials Management Plan and with the other requirements in the Contract Documents. All Hazardous Materials shall be managed in accordance with applicable Government Rules, Governmental Approvals, the Approved Hazardous Materials Management Plan, and the Approved Injury and Illness Prevention Program.
- (b) Hydrogen Fuel Safety Plans. The Design-Builder shall develop a Hydrogen Safety Plan and an Emergency Response Plan, and shall carry out a Hazard Analysis, all in accordance with the requirements and timing set forth in the Contract Documents.
- (c) Discovery of Hazardous Materials.

- (i) *Required Actions*. If during the course of the Work, the Design-Builder encounters material quantities suspected to be Hazardous Materials, the Design-Builder shall (1) immediately notify HTA telephonically or in person (to be followed within twenty-four (24) hours by notification to HTA in writing), and advise HTA of any obligation to notify State or Federal agencies under applicable Government Rules; (2) conduct such further investigation as may be necessary or appropriate to determine the nature and extent of the Hazardous Materials; and (3) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials. For purposes of this Section, the term “material quantities” means quantities that trigger any reporting, investigation, or remediation requirements under any Environmental Law. Where excavation or dewatering is not reasonably avoidable, the Design-Builder shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by HTA. Wherever feasible and consistent with applicable Government Rules, contaminated soil and groundwater shall not be disposed off-site.
- (ii) *Opportunity to Inspect*. The Design-Builder shall afford HTA the opportunity to inspect sites containing Hazardous Materials before any action is taken that would inhibit HTA’s ability to ascertain the nature and extent of the contamination.
- (iii) *HTA Rights*. HTA reserves the right to use other labor forces to investigate and to perform Work to determine the nature and extent of any Hazardous Materials, and to handle, remediate, dispose of, and/or remove Hazardous Materials (including contaminated groundwater) from the Site.

Section 6.04 Specific Obligations Related to Hazardous Materials.

- (a) Design-Builder Obligations Regarding Hazardous Materials.
 - (i) *General Obligations*. The Design-Builder shall be responsible for the pre-treatment, removal, disposal, and/or remediation, as appropriate, of any Hazardous Materials encountered in its performance of the Work, including any contaminated groundwater or surface water contaminated with Hazardous Materials and any lead, lead-containing materials, asbestos and asbestos-containing materials in structures and/or other improvements that must be demolished, removed, relocated or altered in connection with the Work, whether located within or outside the Project area ROW. All actions undertaken by the Design-Builder shall be in accordance with the Hazardous Materials Management Plan and applicable Government Rules. Except in the case of any Hazardous Materials identified by HTA in the Contract Documents, the Design-Builder may be eligible for a Change Order increasing the Contract Price and/or the Completion Deadlines under 6.01(f) for carrying out its obligations under this subsection.
 - (ii) *Remediation*. The Design-Builder shall utilize the services of previously qualified, trained, and/or appropriately certified personnel and Subcontractors for Hazardous Materials and contaminated substance remediation.
 - (iii) *Pre-Existing Conditions*. The obligations of the Design-Builder set forth in this subsection shall

not be construed to create any liability for damages or claims relating to Hazardous Materials arising solely out of pre-existing Site contamination or to give the Design-Builder the status of the generator of such Hazardous Materials.

- (b) Materials Brought to Site by Design-Builder. The Design-Builder shall be solely responsible for (1) compliance with all Government Rules applicable to Hazardous Materials brought onto the Site by the Design-Builder or any Design-Builder-Related Entity; (2) the use, containment, storage, management, transport, removal, and disposal of all such Hazardous Materials in accordance with this Contract and all applicable Government Rules and Governmental Approvals; and (3) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials. The Design-Builder shall not be eligible for a Change Order for costs or time incurred in connection with Hazardous Materials brought onto the Site by the Design-Builder.
- (c) Avoidable Hazardous Materials. The Design-Builder shall be responsible for taking reasonable re-design or construction techniques to avoid Hazardous Materials encountered in performance of the Work.
- (d) Environmental Approvals Relating to Hazardous Materials. Except as otherwise provided in Section 8.11 hereof, the Design-Builder shall be responsible for (1) obtaining all Governmental Approvals relating to Hazardous Materials Management, including Federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials, as applicable, and (2) complying with such Governmental Approvals and applicable Government Rules, including those governing the preparation of waste profiles, waste manifests, and bills of lading.
- (e) Removal of Stored Hazardous Materials Upon Completion or Termination. Within thirty (30) calendar days after Substantial Completion, or upon earlier termination of the Contract for any reason, the Design-Builder shall remove from the applicable portions of the ROW and locations, and remediate or dispose of in accordance with the Environmental Laws or other Government Rules, all Hazardous Materials stored thereon in connection with or as a result of any Work or other activities by or for the Design-Builder or any Design-Builder-Related Entity. The Design-Builder shall demonstrate such removal and any remediation or disposal necessary for protection of human health and the environment to the reasonable satisfaction of HTA, and shall provide copies to HTA of all records pertaining to such remediation and disposal.
- (f) Availability of Change Orders.
 - (i) General Rule Regarding Change Orders. The Design-Builder shall be eligible for an increase in Contract Price and/or an extension in Contract Time for carrying out its obligations under Section 6.04, subject to and in accordance with the provisions of Article X hereof; provided that to the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, the Design-Builder shall rely on insurance to provide compensation, in lieu of requesting a Change.
 - (ii) Notice Requirement. The Design-Builder shall be deemed to have waived the right for an

increase in the Contract Price for costs incurred in connection with any Hazardous Materials remediation and any right to obtain an extension of in Contract Time if HTA is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect Sites containing Hazardous Materials before any action is taken which would inhibit HTA's ability to ascertain, based on a Site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, the Design-Builder may take such limited actions as are required by law without advance notice to HTA, but shall provide such notice immediately thereafter (which in no event shall be more than two (2) hours after the incident by phone and twenty-four (24) hours after the incident by written notice).

- (iii) Limitation on Change Order Costs. Allowable costs for a Compensable Event based on Hazardous Materials shall be limited to the incremental costs incurred in performing Hazardous Materials remediation after completion of the testing process to determine whether Hazardous Materials are present (deducting any avoided costs such as the cost of disposal that would have been incurred had Hazardous Materials not been present). Compensation shall be allowed only to the extent that the Design-Builder demonstrates to HTA's satisfaction that (1) the Hazardous Materials could not have been avoided by reasonable design modifications or construction techniques; and (2) the Design-Builder's plan for the Hazardous Materials remediation represents the approach which is most beneficial to the Project and the public. The Design-Builder shall provide HTA with such information, analyses, and certificates as may be requested by HTA in order to enable a determination regarding eligibility for compensation.

Section 6.05 Differing Site Conditions.

- (a) Notification. If after NTP and during the course of the Work, the Design-Builder becomes aware of any Differing Site Conditions, the Design-Builder shall immediately notify HTA telephonically or by electronic mail or in person, to be followed within twenty-four (24) hours by written notification to HTA. Such notification shall specify if such conditions are believed to include archaeological, paleontological, or Cultural Resources.
- (b) Work Stoppage. The Design-Builder shall stop Work in the area upon discovery of any Differing Site Condition if any of the following conditions apply: (1) continuation of the Work will prevent or hinder the ability of HTA to view the location and fully evaluate the Differing Site Condition, or will prevent the Design-Builder from conducting and completing further investigation; (2) the Design-Builder decides to submit a Change Request regarding the Differing Site Condition; (3) the Design-Builder is required to stop Work under applicable Government Rules; or (4) under the circumstances continuation of the Work would create an imminent threat to health or safety. If one of the above conditions exists, the Design-Builder shall immediately stop Work in and secure the area, shall immediately notify HTA of the work stoppage, and shall afford HTA the opportunity to inspect the area. In that event, HTA will view the location within three (3) Business Days of receipt of notification and shall advise the Design-Builder at that time whether Work should be resumed or whether further investigation is required. The Design-Builder shall be deemed to have waived the right to seek an increase in Contract Time or the Contract Price in connection with the Differing Site Condition if HTA is not afforded the opportunity to inspect such condition before it has been disturbed.

- (c) Investigation. In the event of discovery of a Differing Site Condition, the Design-Builder shall promptly conduct such further investigation as may be required by the Contract Documents or as HTA deems appropriate. The time taken to investigate shall not be cause, for any reason, to extend the Contract Time. Promptly after completing further investigation, the Design-Builder shall advise HTA in writing of all information and data gathered regarding the Differing Site Condition, its plan of action regarding the situation, and a reasonably detailed cost estimate for implementing such plan. The plan of action shall include the Design-Builder's advice regarding whether the location should be fenced off or whether Work can resume. The Design-Builder's plan shall be subject to HTA's written Approval prior to implementation.
- (d) Availability of Change Order. In the event of the discovery of a Differing Site Condition, the Design-Builder may be eligible for a Change Order under Article X hereof to increase the Contract Price and/or the Contract Time if the Design-Builder (1) demonstrates to the satisfaction of HTA that (1) such Condition qualifies as a Differing Site Condition, as documented by a statement from a qualified professional; and (2) such Condition could not have been discovered or determined through reasonable efforts and due diligence in the preparation of the Design-Builder's Proposal in response to the RFP; and (3) the Design-Builder satisfies the other requirements and conditions on the issuance of a Change Order set forth in Article X hereof.
- (e) Resumption of Work. HTA shall have the right to require the Design-Builder to recommence Work in the area at any time, even though an investigation is still ongoing, unless precluded by applicable Government Rules or Governmental Approvals. The Design-Builder shall promptly recommence Work in the area upon receipt of notification from HTA to do so. Upon recommencing Work, the Design-Builder shall follow all applicable procedures contained in the Contract Documents and all Government Rules and Governmental Approvals with respect to such Work.
- (f) Other Governmental Procedures. If any Government Rule or Governmental Approval specifies a procedure to be followed that is more stringent than the procedure set forth in this Section, the Design-Builder shall follow the procedure set forth in the Government Rule or Governmental Approval.

Section 6.06 Environmental Compliance.

- (a) General Obligation. The Design-Builder shall comply with all applicable Environmental Laws in performance of the Work, and with applicable requirements contained in Governmental Approvals issued thereunder (whether obtained by HTA or the Design-Builder), including all requirements in the Contract Documents and the Environmental Approvals. The Design-Builder acknowledges and agrees that it is responsible, without any increase in the Contract Price, for any fine or penalty assessed for failure to comply with such requirements.
- (b) Specific Requirements. The Design-Builder's environmental compliance requirements include the following:
 - (i) Air Quality Control.

- 1) The Design-Builder shall comply, at a minimum, with (A) all applicable standards, orders and requirements issued under the Clean Air Act (42 U.S.C. Section 7401 et seq.); (B) all mitigation measures required by Governmental Approvals for the Project, and (iii) the requirements set forth in the approved Air Quality Management Plan provided by the Design-Builder. The Design-Builder shall submit evidence monthly, throughout the Contract Term, to HTA that the governing air quality control criteria are being met, and shall require Subcontractors (including Suppliers) to provide such evidence as well. Evidence shall be consistent with the reporting or analytical requirements of the applicable statutes, regulations, and guidelines.
 - 2) The Design-Builder shall comply with all applicable requirements regarding solvents used in the performance of the Work, including the solvent portions of paints, thinners, curing compounds, and liquid asphalt. Containers of paints, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with such requirements.
 - 3) The Design-Builder shall assure that goods to be disposed of are not burned.
- (ii) *Water Quality.* The Design-Builder shall comply with (1) all applicable standards, orders, and requirements issued under the Clean Water Act (33 U.S.C. Section 1251 et seq.); (2) all applicable water standards of the State; and (3) all mitigation measures required by Governmental Approvals for the Project.
- (iii) *Federal and State Environmental Protection Regulations.* The Design-Builder shall comply with all applicable regulations (40 CFR Part 15) of the Environmental Protection Agency (EPA), all applicable regulations of the North Coast Unified Air Quality Management District or other state, municipal, and local Governmental Entities, and any requirements imposed under any applicable Environmental Approvals. The Design-Builder shall not use any facility in the performance of the Contract that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates the name of the facility from such listing. The Design-Builder shall promptly notify HTA of the receipt of any communication from the EPA (or any successor agency) indicating that a facility to be used by the Design-Builder is under consideration for listing on the EPA List of Violating Facilities. The Design-Builder shall promptly report violations of such regulations to HTA, and the EPA Assistant Administrator for Enforcement.

Section 6.07 Third Party Agreements; Governmental Approvals.

- (a) *Third Party Agreements.* HTA is responsible for developing and entering into the Third Party Agreements necessary to design and construct the Project, except for any Third Party Agreements specifically identified as the Design-Builder's responsibility in the Contract Documents. The Design-Builder is responsible for reviewing all Third Party Agreements, and responsible for complying with and satisfying the terms and conditions of the Third Party Agreements that relate to the Design and Construction of the Project.
- (b) *Licenses, Permits, and Approvals.*
- (i) *Design-Builder Responsibility.* Except for any Governmental Approvals listed in the Contract

Documents as the responsibility of HTA, the Design-Builder shall identify and obtain, prior to beginning any related Work, all necessary licenses, permits, and other Governmental Approvals required for the timely prosecution of the Work, and shall furnish HTA with fully executed copies thereof. Responsibility for the cost of such licenses, permits, and other Governmental Approvals shall be as specified in Section 5.19(b).

- (ii) HTA Responsibility. HTA is responsible for obtaining and will provide any licenses, permits, and other Governmental Approvals listed as its responsibility in the Contract Documents.
- (iii) Design-Builder's Representation. The Design-Builder acknowledges and agrees that, prior to entering into this Contract, it familiarized itself with the requirements of all Government Rules and applicable laws, and the requirements for applicable licenses, permits, and other Governmental Approvals.
- (c) Issuance to HTA. If any Governmental Approval, required to be obtained by the Design-Builder must formally be issued in the name of HTA, the Design-Builder shall undertake all efforts to obtain such approvals (subject to HTA's reasonable cooperation with the Design-Builder), including execution and delivery of appropriate applications and other documentation. The Design-Builder shall assist HTA in obtaining the approvals and any amendments thereto, including providing information requested by HTA, and participating in meetings regarding such approvals.
- (d) Maintenance of Governmental Approvals. The Design-Builder shall undertake all actions necessary to maintain, in full force and effect, all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract or by any Government Rule except to the extent that responsibility for performance of such measures is expressly assigned to HTA or any other Person.
- (e) New Approvals.
 - (i) HTA Responsibility. HTA is responsible for obtaining any New Approval that is required as the result of a HTA-Directed Change or a Force Majeure Event, and for obtaining any category or type of New Approval identified as the responsibility of HTA in the Contract Documents. However, the Design-Builder shall provide support services to HTA with respect to obtaining any such New Approval without any increase in the Contract Price or extension in Contract Time.
 - (ii) Design-Builder Responsibility. The Design-Builder shall be fully responsible, at its sole expense, for obtaining all New Approvals other than those described in paragraph (i) above, and for meeting all requirements in connection with such New Approvals. The Design-Builder shall not be eligible for any increase in Contract Time or Contract Price as a result of obtaining or complying with such New Approval, unless such New Approval is made necessary by a material change in Law.
 - (iii) Value Engineering Changes. If the New Approval is associated with a Value Engineering Change Proposal, as defined in Section 18.01, the costs of obtaining and complying with the terms of the New Approval, as defined in Section 6.07(e), shall be considered in determining the cost

savings to be shared with HTA.

- (f) Third Party Reviews and Approvals. HTA will take all reasonable efforts to facilitate timely Third Party reviews and approvals, including review of Design Plans and related documents. The Design-Builder shall cooperate with HTA in obtaining such reviews and approvals, and shall not be eligible for any increase in Contract Time or Contract Price as a result of any Third Party review or approval process.

Section 6.08 Force Majeure Events. Except for events meeting the definition of “Force Majeure”, or otherwise specified in the Articles herein, the risk of all events beyond the control of the Parties shall be borne by the Design-Builder. In accordance with the provisions of Article X hereof, HTA will issue a Change Order to the Design-Builder to extend the Completion Deadlines as a result of any delay in the Critical Path Schedule directly caused by a Force Majeure event.

ARTICLE VII. TRANSITIONAL SERVICES: OPERATIONS AND MAINTENANCE (O&M) AND HYDROGEN FUEL SUPPLY

Section 7.01 Commencement of Services. Beginning on Final Acceptance of all or a portion of the Construction Work, Design-Builder shall provide Transitional Services for that portion of Hydrogen Fueling Station for which Final Acceptance has been achieved, including necessary Equipment and supplies, in accordance with the Contract Documents.

Section 7.02 O&M Services. Design-Builder shall be responsible for the operation, maintenance, and repair of the Hydrogen Fueling Station, and for all other labor, Equipment, insurance, supplies, storage, and facilities required to provide the O&M services required under the Contract Documents. Design Builder shall coordinate, manage, and control all activities necessary to perform the O&M component of the Work and carry out its responsibilities under the Contract Documents. Such responsibilities include, but are not limited to:

- (a) Ensuring that the Hydrogen Fueling Station dispenses Qualifying Hydrogen Fuel;
- (b) Maintaining and repairing the Hydrogen Fueling Station and Equipment (including all Equipment and materials therein) in accordance with the standards established by the Approved Operations and Maintenance Plan;
- (c) Providing technicians, mechanics, and all other project personnel;
- (d) Training personnel as necessary;
- (e) Developing administrative procedures, reports, and financial and performance records;
- (f) Providing security for the Facility;
- (g) Developing methods to improve effectiveness and maximize operational efficiency of the hydrogen fueling systems;
- (h) Maintaining the Hydrogen Fueling Station in a clean and orderly condition at all times during the Contract Term;
- (i) Conducting all such maintenance and repair at Design-Builder’s sole expense.

Section 7.03 Equipment Maintenance. The Design-Builder shall, at its sole expense, repair, maintain in good condition, and replace (as necessary) all Equipment used in the Hydrogen Fueling Station or

otherwise used in providing services under this Agreement. The Design-Builder shall maintain all Equipment in accordance with the manufacturer's preventative maintenance program. All replacements made by Design-Builder shall be of like size, kind, and quality to the items replaced, as such items existed when originally installed, and shall be subject to HTA's Approval.

Section 7.04 Fuel Supply Services. Design-Builder shall be responsible for delivering and supplying Qualifying Hydrogen Fuel to the Hydrogen Fueling Station at Design-Builder's sole cost. At the termination of Design-Builder's Fuel Supply Services obligation, any fuel in the tanks shall become the property of HTA without charge or offset to HTA.

- (a) Hydrogen Fuel Purchase and Delivery Plan. Design-Builder shall submit as a condition of Final Acceptance a Hydrogen Fuel Purchase and Delivery Plan. Said Plan shall, at a minimum, set forth how Design-Builder will procure and deliver fuel, and the delivery schedule, to the HTA in a manner that is consistent with the Contract Documents.
- (b) Warranty of Fuel Standards. The Design-Builder warrants that the Hydrogen Fuel supplied pursuant to this Agreement will satisfy the Qualifying Hydrogen Fuel requirements and standards set forth in the Contract Documents. If, as a result of the Contractor supplying Hydrogen Fuel that is not in conformance with those standards HTA Transit suffers damage to a bus or to its fuel cells, the Contractor agrees to reimburse HTA the actual cost of replacement or repair of vehicle fuel cell components, or other affected components of a vehicle, and the actual cost of repair to any Hydrogen Fuel Station Equipment or component.
- (c) Adjustments to Quantities. At least sixty (60) calendar days before the end of each fuel delivery year, HTA and Design-Builder shall meet and determine whether adjustments to the quantity of Qualifying Hydrogen Fuel to be supplied by Design-Builder in the following year are necessary or appropriate.
- (d) Alternate Fuel Source. In the event the Design-Builder is unable, for any reason, to furnish Qualifying Hydrogen Fuel, HTA reserves the right to obtain Qualifying Hydrogen Fuel from another source upon five (5) calendar days advance Notice to Design-Builder. HTA shall resume purchasing Qualifying Hydrogen Fuel from the Design-Builder in accordance with the Contract Documents upon reasonable Notice from Design-Builder certifying that it is able to resume supplying Qualifying Hydrogen Fuel. Any action taken by HTA under this Section shall not diminish or otherwise affect the Design-Builder's obligations; provided that the Design-Builder's warranty obligations under Article VIII hereof shall not apply to Qualifying Hydrogen Fuel supplied by another entity. Design-Builder shall be responsible for reimbursing to HTA the marginal cost increase incurred by HTA in obtaining alternate hydrogen fuel. HTA may offset such cost increases against any future payments made to Design-Builder.

Section 7.05 Hazardous Material Handling. The Design-Builder acknowledges that the hydrogen fuel used at the Facility is hazardous and that the Design-Builder understands those hazards. The Design-Builder agrees to comply with all safety requirements under applicable Government Rules in the handling, storing, and use of such hydrogen fuel and to provide appropriate warnings and protections to its employees and others who are exposed to such product.

Section 7.06 Term for Providing Transitional Services. Design-Builder shall provide both O&M Services and Fuel Supply Services for two (2) years after Final Acceptance of the Construction Work, unless either O&M Services or Fuel Supply Services, or both, are terminated earlier in accordance with the terms and conditions of Contract Documents. HTA shall have the option to extend Design-Builder's obligation to provide either O&M Services or Fuel Supply Services, or both, for three one (1)-year time periods, as determined necessary in HTA's sole discretion. HTA shall notify the Design-Builder in writing at least 60 calendar days prior to the end of any O&M Service term whether it intends to exercise its option to extend either, or both, Design-Builder's O&M Services or Fuel Supply Services, obligations.

Section 7.07 O&M, Hydrogen Safety, Emergency Response, and Other Plans.

- (a) Required O&M Plans. The following plans must be submitted by the Design-Builder as a condition of Final Acceptance and Approved by HTA prior to commencement of any Transitional Services: Operations and Maintenance Plan; Hydrogen Safety Plan; Emergency Response Plan; Staffing Plan; and Training Plan.

Section 7.08 Compensation for Transitional Services, Payment.

- (a) Compensation During for Transitional Services Period. The Design-Builder will be compensated for providing Transitional Services as specified in the Agreement.
 - (i) O&M Services. The compensation provided to the Design-Builder for O&M Services shall cover all costs of providing all operations and maintenance under the Contract Documents, including all Equipment costs, all personnel costs, all insurance, and all taxes.
 - (ii) Fuel Supply Services. The compensation provided to the Design-Builder for Fuel Supply Services shall cover all costs and expenses incurred in the performance of such Services, including transportation and supply, purchases of Qualifying Hydrogen Fuel, personnel costs, training, equipment, permits and fees, and taxes.

ARTICLE VIII. BONDING, INSURANCE, AND INDEMNIFICATION

Section 8.01 Obligation to Provide Bonds. The Design-Builder shall provide to HTA, and shall maintain at all times during the term of the Agreement, security for performance of the Work as described in this Section. Each bond required hereunder shall be provided by a Surety authorized to do business in the State of California with an A.M. Best Co. "Best's Rating" of A- or better and Class VIII, unless otherwise approved by HTA in its sole discretion. Performance Bonds and Payment (Labor and Materials) Bonds shall be in the form set forth in the RFP. Supply Bonds and Warranty Bonds shall be on such forms as Approved in advance by HTA.

Section 8.02 Performance Bond. The Design-Builder shall provide to HTA, and shall maintain in full force and effect during the term of the Agreement, a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price. The Performance Bond shall remain in full force and effect until the expiration of the Warranty term, provided that no outstanding claims are then pending against the Design-Builder. The penal amount of the Performance Bond shall be adjusted to include one hundred percent (100%) of the price of Changes and any Contract amendments.

Section 8.03 Payment Bond. The Design-Builder shall provide to HTA, and shall maintain in full force and in effect during the term of the Agreement, a Payment Bond in an amount equal to one hundred percent (100%) of the Contract Price. The Design-Builder shall maintain the Payment Bond in full force and effect until the Design-Builder has delivered to HTA (a) evidence satisfactory to HTA that all Persons eligible to file a claim against the bond have been fully paid and (b) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond; or (c) expiration of any statutory period for Subcontractors to file a claim against the bond. The amount of the Payment Bond shall be adjusted to include one hundred percent (100%) of the price of Changes and Contract Amendments.

Section 8.04 Supply Bond. At the time of commencement of Transitional Services, Design-Builder shall procure at its sole expense, and maintain in full force and effect at all times until termination of its obligation to provide Fuel Supply Services an annual Supply Bond equivalent to one hundred percent (100%) of the cost of Fuel Supply Services for the following year.

Section 8.05 Warranty Bond. After Final Acceptance, HTA may permit the Design-Builder to obtain a release of the Performance Bond by providing a warranty bond, or such other security as is approved by HTA in its sole discretion, which shall guarantee performance of Work required to be performed during the one-year general warranty period following Final Acceptance, including Warranty Work, and which shall also constitute a payment bond guaranteeing payment to Persons performing such Work ("Warranty Bond"). The Warranty Bond shall be in an amount equal to ten percent (10%) of the Contract Price and shall be in a form satisfactory to HTA, in its sole discretion.

Section 8.06 No Relief of Liability. Notwithstanding any other provision set forth in the Contract Documents, performance by a Surety or Guarantor of any of the obligations of the Design-Builder shall not relieve the Design-Builder of any of its obligations hereunder under this Article.

Section 8.07 Design-Builder Insurance. The Design-Builder shall purchase insurance coverages specified in this Article and shall continuously maintain those coverages in full force and effect through Final Acceptance, or such longer or shorter time as may be specifically provided below. The insurance provided hereunder shall be available for the benefit of HTA and the Design-Builder with respect to covered claims, but shall not be interpreted to relieve the Design-Builder of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies authorized or approved to do business in the State of California with an A-, Class VII or better rating level. All limits of liability set forth below are in U.S. Dollars. The insurance coverages identified in this Section shall be provided to and Approved by HTA prior to the issuance of the NTP.

- (a) Commercial General Liability Insurance. The Design-Builder shall provide commercial general liability broad form coverage (for bodily injury, property damage, personal injury and advertising injury). Such insurance shall include, by its terms or appropriate endorsements, coverage for

bodily injury, property damage, fire legal liability (not less than the replacement value of the portion of the premises occupied), personal injury, blanket contractual, independent Design-Builders,' premises operations, products and completed operations (for a minimum often (10) years following Final Acceptance), broad form property damage and hazards commonly referred to as "x" (explosion), "o" (collapses) and "Uu" (underground) exposures. This coverage shall have a minimum limit of \$5 million per occurrence, double that amount in general aggregate. The Design-Builder shall maintain such insurance through the expiration of the Warranty period. If commercial general liability insurance general aggregate limit is less than double, then an endorsement shall be obtained wherein the aggregate limits shall apply separately to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder; any such excess insurance shall be at least as broad as the Design-Builder's primary insurance. The Design-Builder shall be the named insured and each of the Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Design-Builder or any Design-Builder-Related Entity, whether occurring on or off of the Site.

- (b) Workers' Compensation and Employer's Liability Insurance. The Design-Builder shall provide workers' compensation insurance in conformance with the laws of the State of California, and employer's liability insurance (for bodily injury or disease) with minimum limits of \$1 million per accident for bodily injury by accident, \$1 million per employee for bodily injury by disease, and \$1 million policy limit for bodily injury by disease. The Design-Builder shall be the named insured on these policies.
- (c) Automobile Liability Insurance. The Design-Builder shall provide comprehensive automobile liability insurance covering the ownership, maintenance, or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Site, including loading and unloading, with limits of not less than \$5 million, combined single limit for bodily injury and property damage liability. The Design-Builder shall maintain such insurance through Final Acceptance; provided, however, that such coverage shall be maintained for vehicles used in the performance of any work related to the Project until the expiration of the Warranty period. The Design-Builder shall be the named insured and the Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Design-Builder or any Design-Builder-Related Entity.
- (d) Professional Liability Insurance. The Design-Builder shall provide professional liability coverage with limits not less than \$2 million per claim and aggregate. The professional liability coverage shall be Project specific and shall protect against any negligent act, error, or omission arising out of design or engineering activities with respect to the Project, including coverage for acts or omissions by the Design-Builder or any Design-Builder-Related Entity. The policy shall remain in full force and effect for a period of five (5) years following Final Acceptance. The coverage shall include the Design-Builder and any of its Subcontractors (including design subconsultants) of any tier. The Design Builder shall provide a Project specific policy meeting the above requirements, and shall obtain certifications from the Designer and all design subconsultants that they will provide professional liability coverage for the Project from their respective program/corporate policies.

- (e) Pollution Liability Insurance. Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.
- (f) Builders Risk. The Design-Builder shall provide builder's risk insurance for the Project as specified below. The named insureds shall be the Design-Builder, all Subcontractors (excluding those solely responsible for Design Work) of any tier, and HTA, as their interests may appear. The Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Design-Builder or any Design-Builder-Related Entity, whether occurring on or off of the Site. The insurance shall be maintained until the date of Final Acceptance; provided that the Design-Builder shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to HTA. Requirements for this Builder's Risk insurance are as follows:
 - (i) Minimum Scope. A blanket builder's risk insurance policy on an "all risk" basis for the entire Project including: (A) coverage for any ensuing loss from faulty workmanship; Nonconforming Work or materials, omission, or Deficiency in design or specifications; (B) coverage against damage or loss caused by earth movement, flood, fire, theft, vandalism and malicious mischief and machinery accidents and operational testing; (C) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (D) "soft cost expense cover" (including attorneys' fees and fees and other costs associated with such damage or loss and with any Government Approvals) with a limit of \$4 million; and (E) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to HTA.
 - (ii) Minimum Coverage. Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, with a minimum limit in the amount of \$8.0 million. The coverage shall include earth movement and flood coverage that has a minimum sub-limit of \$4 million. The coverage shall be written without risk of liability of HTA for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions shall be no greater than five percent (5%) of the total value of each insured unit at the time of loss.
 - (iii) Partial Use by HTA. If HTA will use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Section 12.03, then HTA will provide advance notice of such or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

Section 8.08 General Requirements Applicable To All Insurance.

- (a) Design-Builder's Failure to Procure. The Design-Builder's failure to procure or maintain the insurance required by this Section during the entire term of the Work shall constitute a material breach of contract. In the event of such a breach, HTA may exercise all available rights and remedies hereunder, including the rights to immediately suspend or terminate the Agreement, at its discretion, procure or renew such insurance to protect HTA and pay any and all premiums

in connection therewith, and withhold payment to or recover all monies so paid (plus interest) from the Design-Builder.

- (b) Additional Insured Endorsement. Each policy, except for Workers' Compensation and Professional Liability, shall name HTA and its members, directors, officers, employees, agents, and consultants, as an additional insured for both on-going operations and completed operations. The endorsements will provide coverage equal to ISO form CG 20 10 for ongoing operation and ISO form CG 20 37 for completed operations. Furthermore, an endorsement equal to ISO form CG 20 01 will provide HTA and its members, directors, officers, employees, agents, and consultants primary and non-contributing coverage with respect to any other insurance available to the additional insureds. The Endorsement shall include language that affords coverage for any work emanating from the Project and related facilities. The endorsement shall also contain a provision that HTA and each other additional insured shall be notified by the insurer(s), in writing, at least thirty (30) calendar days prior to any cancellation (except ten (10) calendar days' notice in the event of cancellation due to non-payment of premium), non-retrieval, or material change adversely affecting the interest of HTA or such other additional insured.
- (c) Waiver of Subrogation. The Design-Builder hereby waives all rights of recovery under subrogation against HTA (and its officers, employees, subsidiaries, members, directors, and agents, and any other Design-Builder or Subcontractor performing Work or rendering services on behalf of HTA in connection with the planning, development and construction of the Project, including loss or liability because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason. Each of the insurers issuing the coverages identified in this Article shall agree to waive all rights of subrogation to recover against HTA and any of the other above-named parties or persons. A Waiver of Subrogation endorsement will be provided for the Worker's Compensation policy.
- (d) Additional Insurance. The Design-Builder shall, by mutual agreement with HTA and at HTA's cost, provide any additional insurance as may be required by HTA. The Design-Builder shall provide certificates of insurance evidencing any such additional insurance coverage.
- (e) Deductibles. The Design-Builder shall be solely responsible for all deductibles and self-assured retentions hereunder. Any deductibles or self-insured retentions greater than \$50,000 for all lines of coverage must be declared to and approved by HTA.
- (f) Delivery of Policies. The Design-Builder shall provide actual copies of the policy of any insurance that is required hereunder within ten (10) calendar days after HTA's request. In the event that the Design-Builder has not received the policy, a signed Binder of Insurance detailing coverage and deductibles will suffice until the policy is received. The Design-Builder shall submit all required Insurance certificates (and any other related documents) specified in the Contract within seven (7) Business Days after Notice of Award of the Contract. The Design Builder shall not commence the Work until it receives written confirmation of HTA Approval of all required insurance certificates.
- (g) Unavailability of Required Coverages. If, following the execution of this Contract, the Design-Builder documents and demonstrates to the reasonable satisfaction of HTA that a specific

coverage (or component of coverage) required hereunder is commercially unavailable at that time, then HTA will consider alternative insurance packages and programs that provide risk coverage comparable to that required, at no additional cost to HTA. To demonstrate that a specific coverage (or component of coverage) is “commercially unavailable”, the Design-Builder must document, by providing a letter from the Design-Builder's insurance broker or agency, that the Design-Builder has sought to obtain that coverage (or component of coverage) from insurance carriers and that the coverage (or component of coverage) either is not currently offered or that it cannot be provided at a commercially reasonable price. Such letter shall include the names of the insurance carriers and appropriate detail regarding their unwillingness to provide coverage and/or premium indications. The Design-Builder shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. HTA shall be entitled to a reduction in the Contract Price if it agrees to Approve alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes on which the Design-Builder based its price proposal.

- (h) Primary and Non-Contributory. The insurance coverage specified in this Article shall be primary insurance for claims covered with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents and consultants shall be excess of such insurance and shall not contribute.
- (i) Governmental Immunity. Insurance companies providing policies as required under this Article shall waive their rights to assert the immunity of HTA or other government entity as defense to any claims arising out of this Contract.

Section 8.09 Subcontractor Insurance Requirements.

- (a) General. If a Subcontractor is not covered by the Design-Builder's provided insurance, the Design-Builder shall cause such Subcontractor to directly provide insurance for its Work that complies with requirements for Design-Builder insurance set forth in Section 8.06 including the limits specified in said Section; provided that the Design-Builder may allow a Subcontractor to have alternative limits of coverage or insurance programs, in accordance with reasonable and prudent business practices, subject to the prior written Approval of HTA.
- (b) Specific Requirements. The Design-Builder shall cause each such Subcontractor to include the Indemnified Parties as additional insureds under such Subcontractor's insurance policies to the same extent as required for the Design-Builder. The Design-Builder shall also require each such Subcontractor to comply with all the general requirements stated in Section 8.07. If requested by HTA, the Design-Builder shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. HTA shall have the right to contact the Subcontractors directly in order to verify the above coverage.

Section 8.10 Prosecution of Claims. Unless otherwise directed by HTA in writing, the Design-Builder shall be responsible for reporting and processing all potential claims by the Design-Builder, HTA, or other additional insureds against the insurance required to be provided. The Design-Builder agrees to report timely to the insurer(s) any and all matters that may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of HTA, whether for defense or indemnity or both. HTA agrees to promptly notify the Design-Builder of HTA's incidents, potential claims, and matters that may give rise to an insurance claim by HTA, to tender its defense or the claim to the Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

Section 8.11 Indemnification by Design-Builder.

- (a) Scope of General Indemnification. Subject to Section 8.10(f), the Design-Builder shall release, defend, indemnify and hold harmless HTA, and its officers, directors, agents, employees, and consultants (collectively referred to as the "Indemnified Parties") from and against any and all claims, causes of action, suits, legal or administrative proceedings, costs, damages, losses and liabilities of any kind, including any injury to or death of persons or damage to or loss of property, and including reasonable attorneys' and expert witness fees and costs incurred in connection with the implementation of this indemnity, arising out of, relating to or resulting from, any act, error, omission, negligence, recklessness, or intentional misconduct of the Design-Builder or any Design-Builder-Related Entity in connection with or relating to, or claimed to be in connection with or related to, the Work or this Contract.
- (b) Design-Builder Documents. Subject to Section 6.10(e), the Design-Builder shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities and costs, including reasonable attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents or the Construction Documents furnished by the Design-Builder, regardless of whether such errors, omissions, inconsistencies, or defects were also included in the Contract Documents or Reference Documents.
- (c) Reliance on Indemnities. The Design-Builder hereby acknowledges and agrees that it is the Design-Builder's obligation to design and construct the Project in accordance with the Contract Documents and that the Indemnified Parties described above are fully entitled to rely on the Design-Builder's performance of such obligation. The Design-Builder further agrees that any review and/or Approval by HTA and/or others hereunder shall not relieve the Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.
- (d) Applicability to Third Parties. The Design-Builder is specifically advised that the third party Agreements may include certain agreements by HTA to indemnify, defend, and hold harmless the third parties. The Design-Builder's obligations under this Section shall automatically apply to require it to release, indemnify, defend, and hold harmless the third parties, in addition to the Indemnified Parties, with respect to all such matters, to the extent that such matters fall within the scope of the indemnities made by the Design-Builder as set forth in this Section.
- (e) Source of Payment. Payments due to the Design-Builder under this Contract may be retained by

HTA as necessary for the Design-Builder to satisfy its obligations under this Section, or in case no payments are due, the Performance Bond may be held until the action or claim for the injuries or damages covered by the indemnification hereunder has been settled and suitable evidence to that effect furnished to HTA. However, payments due the Design-Builder will not be withheld when the Design-Builder produces satisfactory evidence that it is adequately protected by the insurance required hereunder and the insurance carrier has Approved responsibility and tender of such action or claim.

- (f) Restrictions on Indemnification. The Design-Builder's indemnity obligation shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the gross negligence, recklessness, or intentional misconduct of HTA or any other Indemnified Party or any of their agents, officers, or employees.

Section 8.12 Liability for Hazardous Materials.

- (a) Hazardous Materials. It is not the intention of the Parties that the Design-Builder be exposed to any liability for damages or claims relating to Hazardous Materials arising solely out of (1) pre-existing Site contamination, whether known or unknown, except as otherwise provided in Section 8.11(c); (2) the non-negligent performance by Design-Builder or any Design-Builder-Related Entity of the handling of Hazardous Materials; and/or (3) the activities of any persons (including HTA) other than the Design-Builder or a Design-Builder-Related Entity.
- (b) No Status as Generator of Hazardous Materials. Except for Hazardous Materials for which the Design-Builder is responsible as described in Section 8.11(c):
 - (i) The Design-Builder shall not be required to execute any Hazardous Waste manifests as a Generator of any such Hazardous Materials, and
 - (ii) Hazardous Materials encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by, and carried in the name of, HTA or another person designated by HTA.
- (c) Inclusion in Design-Builder Indemnity. The Design-Builder is responsible for and its Indemnification under Section 8.10 shall include any release of Hazardous Materials which were (1) brought onto the Site by the Design-Builder or any Design-Builder-Related Entity; (2) negligently removed, transported, or handled by the Design-Builder or any Design-Builder-Related Entity, regardless of the source or origin of such Hazardous Materials; or (3) released, removed, transported, or handled by the Design-Builder or any Design-Builder-Related Entity in violation of applicable Government Rules or Governmental Approvals, or in non-compliance with the terms of the Contract Documents.

Section 8.13 Joint and Several Liability. If the Design-Builder is a joint venture or partnership, each joint venture member or partner shall be jointly and severally liable for any and all of the duties and obligations of the Design-Builder that are assumed under or arise out of this Contract, including the indemnification provided under this Article. Each joint venture member or partner waives notice of the breach or non-performance of any undertaking or obligation of the Design-Builder contained in, resulting from, or assumed under this Contract, and the failure to give any such notice shall not affect or impair such joint venture member's or partner's joint and several liability hereunder.

Section 8.14 Survival.

- (a) General. The indemnification specified in this Article shall survive Termination or close-out of this Contract, and is in addition to any other rights or remedies that HTA or the other Indemnified Parties may have under the law or this Contract.
- (b) Application of Funds. In the event of any claim or demand made against any Indemnified Party that is covered by the Design-Builder's Indemnification obligations under this Article, HTA may at its sole discretion reserve, retain, or apply any funds due the Design-Builder under this Contract for the purpose of resolving such claims; provided that HTA may release such funds if the Design-Builder gives HTA reasonable assurance that HTA's interests of HTA or the other Indemnified Parties will be protected. The determination of whether such assurance is reasonable shall be made by HTA in its sole discretion.

Section 8.15 Exclusion of Consequential Damages.

- (a) Exclusion. Except as provided in Section 8.14(b) below, in no event shall either Party be liable to the other Party for any "consequential damages" arising out of performance of the Work or implementation of the Contract Documents (or failure to perform hereunder), and each Party hereby releases the other from such liability. The term "consequential damages" means those special, indirect, or incidental damages that flow naturally and inevitably from an action or failure to act, such as fare revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, extended overhead, claims of taxpayers and other indirect damage. The foregoing shall apply to limit liability under actions brought under any theory of law, including actions in tort (including negligence) as well as in contract, and shall extend to Subcontractors provided that the originally executed Subcontract for such Subcontractor includes a similar release of liability in favor of HTA.
- (b) Exceptions to Exclusion. The exclusion of consequential damages set forth in Section 8.14(a) shall not exclude or affect:
 - (i) The Design-Builder's obligation to pay Liquidated Damages in accordance with Article 13 hereof;
 - (ii) Any liability for gross negligence, fraud, recklessness, intentional misconduct, or criminal acts;
 - (iii) Any liability with respect to indemnification for third party claims; and

- (iv) Any liability for any type of damage or loss, to the extent such loss or damage is covered by insurance required under this Contract or is covered by the actual amount of insurance Design-Builder carries under project specific policies applicable to the Project and the Work (regardless of whether required to be carried hereunder), whichever is greater.

ARTICLE IX. SUBCONTRACTING PLAN, SUBCONTRACTORS, AND LABOR

Section 9.01 Subcontracting Plan.

- (a) Requirement. All Design Work and Construction Work must be carried out by the Design-Builder in accordance with a Subcontracting Plan developed by the Design-Builder and Approved by HTA.
- (b) Submittal to HTA. The Design-Builder shall submit to HTA, within thirty (30) calendar days after the issuance of the NTP, the Subcontracting Plan for the Design Work and the Construction Work. The Plan shall be based on the proposed Subcontracting Plan submitted in its Proposal, shall not include any material changes from that Plan, and shall identify and explain any non-material differences from that Plan. The Subcontracting Plan shall be subject to the review and Approval by HTA. Prior to commencing the Construction Work, the Design-Builder shall submit to HTA, for its review and Approval, any necessary revisions and updates to the Subcontracting Plan.
- (c) Contents of Plan. The Subcontracting Plan shall identify the delivery or subcontracting method that will be used for Major Subcontracts for the Design Work and the Construction Work. The allowable methods for performing Construction Work (including supply of machinery, equipment, and materials) are as follows: (1) self-performance by the Design-Builder; (2) performance by a Subcontractor identified in the Design-Builder's Proposal; or (3) performance by a Subcontractor subsequently selected in accordance with a competitive process that is in accordance with State and Federal law and the provisions of this Article. HTA reserves the right, through its approval of the Subcontracting Plan, to concur in the allocation and process of the work as described in this subsection.
- (d) Full and Open Competition for Subcontracts. The Subcontracting Plan shall include a procedure for the competitive procurement of Subcontracts that is in accordance with applicable State and Federal law. In the award of Subcontracts for construction with a value of exceeding one-half of one percent (1%) of the portion of the Contract Price allocable to Construction Work, the Design-Builder shall provide notice of availability of work to be subcontracted, establish reasonable qualification criteria and standards, and award subcontracts in accordance with § 22166 of the Public Contract Code.

Section 9.02 Subcontractors.

- (a) Subcontracts.
 - (i) Procurement Procedures. The Design-Builder shall follow the procedure for the procurement of Subcontracts that is set forth in its Subcontracting Plan, as Approved by HTA, and that is

consistent with Public Contract Code §§ 4101 et seq, 22160-22169, and all other applicable State and Federal law.

(ii) Substitutions. Once the Design-Builder has entered into any Subcontract, the Design-Builder shall not make any substitution of such Subcontractor unless the substitution is Approved by HTA on one of the following grounds:

- 1) The named Subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the Design-Builder which was offered to the Subcontractor with the same terms that all other Subcontractors on the project were offered.
- 2) HTA objects to the Subcontractor, requests in writing a change in the Subcontractor, and pays any increase in costs resulting from the change.
- 3) The named Subcontractor files for bankruptcy, becomes insolvent, or is disbarred.
- 4) The named Subcontractor fails or refuses to perform its Subcontract within a reasonable time and its failure adversely impacts the Project Schedule.

(b) Required Subcontract Terms. The Design-Builder shall ensure that each Subcontract (at all tiers) includes the following terms, as well as such additional terms and conditions as are necessary to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents:

- (i) All Work being performed and Goods being furnished by the Subcontractor under this Subcontract shall comply with the applicable provisions of this Contract.
- (ii) The Subcontractor shall have the same duties and obligations to the Design-Builder with respect to its performance of its own Work as the Design-Builder has to HTA under this Contract. HTA is the third-party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit.
- (iii) The Subcontractor shall make such schedule commitments, submit such schedules and scheduling information, and submit any other required information to the Design-Builder as is necessary for the Design-Builder to comply with its schedule and reporting commitments to HTA under this Contract.
- (iv) All applicable Federal requirements and contract clauses shall flow down to the Subcontractor.
- (v) All guarantees and warranties, express or implied, shall inure to the benefit of both HTA and the Design-Builder during the performance of the Work; upon final completion of the Work, such guarantees and warranties shall inure to the benefit of HTA.
- (vi) Nothing contained in the Subcontract shall be deemed to create any privity of contract between HTA and the Subcontractor, nor shall it create any duties, obligations, or liabilities on

the part of HTA to the Subcontractor except those required by law. In the event of any claim or dispute arising under the Subcontract or this Contract with HTA, the Subcontractor shall look only to the Design-Builder for any payment, redress, relief, or other satisfaction.

- (vii) These provisions do not and shall not operate to relieve the Design-Builder of any duty or liability under this Contract, nor do they create any duty or liability on the part of HTA. The Design-Builder shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their Subcontractors of any tier.
- (c) Design-Builder Responsibility for Subcontracted Work. The Design-Builder shall be fully responsible to HTA for all acts and omissions of its own employees and of Subcontractors and their employees. The Design-Builder shall also be responsible for coordinating the Work performed by Subcontractors. If a portion of the subcontracted Work is not performed in accordance with the Contract Documents, or if a Subcontractor commits or omits any act that would constitute a breach of the Agreement, or if HTA makes reasonable objection to the use or continued use of such Subcontractor, the Subcontractor shall be replaced at the direction of HTA and shall not again be employed on the Project.
- (d) Subcontractor Breach, Cure, and Replacement. If any portion of the subcontracted Work is not performed in accordance with the Contract Documents, or if a Subcontractor or Supplier commits or omits any act that would constitute a breach of Contract, the Design-Builder shall cure the breach, and at the direction of HTA, shall replace the Subcontractor or Supplier. The Subcontractor or Supplier shall not be employed again on the Work.
- (e) Debarred Subcontractor.
 - (i) The Design-Builder shall not allow Work to be performed by any Subcontractor who is ineligible to perform work on a public works project pursuant to applicable State law and regulations.
 - (ii) Any contract on a public works project entered into between the Design-Builder and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing Work as a Subcontractor by the Design-Builder on the Project, and if any public money was paid to a debarred Subcontractor the Design-Builder shall be responsible for reimbursing HTA.
- (f) Insurance. No Subcontractor at any tier shall be permitted to perform Work until the Design-Builder has supplied satisfactory evidence of required insurance, in accordance with Article XVIII.
- (g) Form of Subcontract. HTA shall have the right to review the form of subcontract used by the Design-Builder and to require modifications to conform to the requirements of the Contract Documents.

Section 9.03 Prevailing Wages. The Design-Builder shall comply with all applicable Federal and State requirements regarding prevailing wages. The provisions pertaining to wages and conditions of employment shall apply to all Work performed by the Design-Builder with its own organization and with the assistance of workers under its immediate superintendence, and to all Work performed by Subcontractors. The provisions also apply to workers in Material sites that are devoted primarily to the production of Material for this Contract.

ARTICLE X. CHANGES

Section 10.01 Change Order Process.

- (a) Purposes for Which Change Orders May Be Issued. Change Orders may be issued by HTA for the following purposes (or combination thereof): (1) to modify the Scope of the Work; (2) to revise a Completion Deadline and/or extend the Contract Time; (3) to revise the Contract Price; or (4) to revise other terms and conditions of this Contract or the other Contract Documents. All Change Orders must be issued in writing and executed by HTA. Changes to terms and conditions of this Contract will be made by Contract Amendment. Change Orders shall be subject to the provisions of this Article.
- (b) Issuance of Change Orders.
 - (i) Rights of HTA. HTA may, at any time and from time to time, without notice to any Surety, authorize and/or direct a Change in the Work within the general scope of the Contract Documents by issuance of a Change Order. As described in this Section, a Change Order may be bilateral or unilateral. Upon receipt of a Change Order, the Design-Builder shall promptly proceed with the Work in accordance with the direction in the Change Order and with the applicable conditions in this Contract and the other Contract Documents. All additions, deductions or Change to the Work as directed by Change Orders shall be carried out under the applicable conditions of this Agreement and the other Contract Documents.
 - (ii) Categories of Design-Builder Change Requests.
 - 1) Completion Deadlines. The Design-Builder may request a Change to extend a Completion Deadline or Contract Time only for the specific Excusable Delays described in Section 10.02.
 - 2) Contract Price. The Design-Builder may request a change to increase the Contract Price only for the specific Compensable Events described in Section 10.02.
 - 3) Contract Documents. The Design-Builder may request a Change, pursuant to Contract Amendment, to revise the terms and conditions of the Contract Documents.
 - (iii) Requirement for Written Change. No direction, order, statement or conduct of HTA, other than written Change Orders and Contract Amendments issued in accordance with this Section and Sections 10.02 and 10.03 hereof, shall be the basis for an increase in the Contract Price, an extension in Contract Time, or a change to the terms and conditions of the Contract

Documents.

- (c) Request for Information (RFI). The Design-Builder may submit a Request for Information (RFI) on any portion of the Work. Except under extraordinary circumstances, the Design-Builder shall submit the RFI a minimum of twenty (20) calendar days prior to the date information is needed. HTA will provide a timely response, and if a Change is required, initiate a Change Notice (CN) or Change Order (CO). HTA will make its best effort to respond within ten (10) calendar days of receipt of the RFI. If the Design-Builder performs any Work that is the subject of an RFI prior to HTA's written response to the RFI, it shall be at the Design-Builder's sole risk and expense.
- (d) Request for Change (RFC). The Design-Builder may submit a Request for Change (RFC) to HTA describing any proposed Change. The Design-Builder shall assign a unique tracking number to each RFC. RFC's shall be subject to the following requirements and conditions:
 - (i) RFC Submittal Requirements. In each RFC, the Design-Builder shall describe the cause, action, or event giving rise to the RFC (the "Event"), identify the Contract Document that it proposes to change, and state the reasons for the Change. If the Design-Builder is requesting an increase to the Contract Price or Contract Time, it shall also submit the following with its RFC.
 - 1) A detailed description of the facts underlying the RFC, the reasons why the Design-Builder believes additional compensation or time will or may be due, and the date of the Event;
 - 2) The name, title, and activity of each HTA employee knowledgeable of the facts underlying the RFC;
 - 3) The Design-Builder's Cost and Schedule Proposal, as described in Section 10.01(f) below;
 - 4) The recommended Change Order, including specific reference to the provisions of this Contract or the other Contract Documents affected, or other basis of entitlement to the Change;
 - 5) For changes affecting Schedule, a fragnet (time impact) analysis showing how the Critical Path will be impacted by the Change;
 - 6) Such other information as HTA may deem necessary to evaluate the RFC, or as the Design-Builder may deem relevant to HTA's evaluation.
 - (ii) RFC Timing Requirements.
 - 1) If the Design-Builder intends to assert that the Event has caused a Change in the Contract Price or Contract Time, or has caused any other Change, the Design-Builder shall submit a RFC within ten (10) calendar days after the occurrence of the Event that is the basis of the RFC. If a Cost and Schedule Proposal (CSP) is requested by HTA, the Design-Builder shall submit that CSP within the time required under Section 10.01(f) below. If the Design-Builder fails to meet either of these submittal deadlines, the RFC will be considered untimely and will

be rejected by HTA. In addition, if the Design-Builder fails to submit a timely RFC, the Design-Builder shall not have, and will be deemed to have waived, any claim to any increase in Contract Price or Contract Time, or other relief, arising out of the Event.

- 2) If a RFC concerns an Event related to a discovery of Hazardous Materials, archeological, paleontological, or Cultural Resources, or Differing Site Conditions, the Design-Builder shall immediately provide notice to HTA within twenty-four (24) hours of the discovery of the Event, and shall afford HTA the opportunity to inspect such discovery before it is disturbed, otherwise the RFC will be considered untimely and will be rejected by HTA. In addition, if both a timely notice and timely RFC were not submitted, the Design-Builder shall not have, and will be deemed to have waived, any claim to any increase in Contract Price or Contract Time or to other relief arising out of the Event.
- (iii) Actions by HTA in Response to RFC. If HTA approves a RFC, it will issue a CN or Change Order. If HTA rejects a RFC for any reason other than it is untimely, such rejection shall constitute a HTA decision that shall commence the period of time in which the Design-Builder has to file a Claim under Article XIV. If HTA does not act on a RFC within thirty (30) calendar days after the Design-Builder's submittal thereof, the RFC shall be deemed rejected on the thirtieth (30th) calendar day after such submittal and the period of time to file a Claim shall begin on that day.
- (iv) Subcontractor Change Requests.
- 1) Review by Design-Builder. Prior to submission by the Design-Builder of any RFC which is based in whole or in part on a request by a Subcontractor for a price increase or time extension under its Subcontract (a "Subcontractor Change Request"), the Design-Builder shall review all claims by the Subcontractor that constitute the basis for the Subcontractor Change Request, determine in good faith that any such claim is justified hereunder, and determine in good faith that any request to increase the Contract Price and/or Contract Time in the amounts specified in the Subcontractor Change Request is justified.
 - 2) Supporting Analysis and Affirmation. Each Subcontractor Change Request submitted to HTA shall include a summary of the Design-Builder's analysis of the components of the Subcontractor claims and an affirmation that the Design-Builder has conducted a due diligence review of the basis for the Subcontractor's claims and has made a good faith determination that all such claims are justified as to entitlement and amount of money and/or time requested. Any RFC involving Subcontractor Work that is not accompanied by such summary analysis and affirmation shall be considered incomplete.
- (v) Design-Builder Risk. Notwithstanding anything to the contrary in this subsection, a RFC shall be at the Design-Builder's risk. The Design-Builder shall not be relieved from performing the Work during the time HTA considers the RFC and will not receive any adjustment in Contract Price or Contract Time if HTA determines the subject matter of the RFC is not an appropriate Change.
- (e) Change Notice (CN). HTA may issue a Change Notice (CN) to the Design-Builder, describing a proposed Change to the Contract and requesting the Design-Builder to submit a Cost and Schedule Proposal (CSP) in accordance with Section 10.01(f). A CN does not authorize the

Design-Builder to commence performance of the proposed Changed Work. Any Change implemented by HTA will be incorporated into a Change Order.

(f) Design-Builder's Cost and Schedule Proposal (CSP).

- (i) CSP Contents and Requirements. After receipt of a CN from HTA, or when requested for a RFC, the Design-Builder shall prepare and submit to HTA a Design-Builder's Cost and Schedule Proposal (CSP) that includes the contents and meets the requirements set forth below:
- 1) Use the forms provided or approved by HTA to identify all costs of the Change, including overhead and profit.
 - 2) Identify the impacts of the Change on, and integrate the Change into, the Critical Path Schedule.
 - 3) Follow Construction Specifications Institute's (CSI) Master Format classification system in describing the Changes.
 - 4) Base the proposal on the Design-Builder's actual, expected construction productivity rates (and provide appropriate support for those productivity rates); not on published or trade association composite rates.
 - 5) Identify any prices or other elements of the CSP that are conditional, such as time-sensitive orders or events.
 - 6) Provide a certification, in a form acceptable to HTA, that the CSP as well as any Subcontractor costs and schedule included in the CSP includes all known and anticipated impacts or amounts, direct, indirect and consequential, that maybe incurred as a result of the Change and that the Design-Builder has no reason to believe and does not believe that the factual basis for the Change is falsely represented.
 - 7) Include Cost or Pricing Data as described in this Article and Section 17.4 hereof.
 - 8) If the Change includes both added and deleted work, provide separate cost breakdowns for the added work and the deleted work. The cost, or credit, amount for the change shall be the agreed upon difference between the cost of the added work and the cost of the deleted work. If the Change results in a net change of zero, there will be no change in the Contract Price.
 - 9) Deliver the CSP to the RTC within a maximum of fifteen (15) calendar days from the date of HTA's request.
 - 10) Provide such other supporting information as HTA may reasonably require.

- (ii) Alternative CSPs. At HTA's request, the Design-Builder shall prepare alternative CSPs: a CSP that provides for an adjustment in both Contract Price and Time; a CSP that provides for an adjustment in Contract Price but maintains Contract Completion Deadlines; and/or a CSP that maintains Contract Price but provides for an adjustment in Contract Time.
 - (iii) Failure to Meet Timing Requirements. If the Design-Builder fails to deliver the CSP within the time limits in Section 10.01(d), or within such extensions of time HTA has granted, the CSP will be considered untimely and will be rejected by HTA. In addition, if a timely CSP was not submitted, HTA may, in its discretion, issue a Change Order at a value HTA determines is fair and reasonable, and the Design-Builder shall not have, and will be deemed to have waived, any Claim to any adjustment to the Change Order value or Schedule Impact, or to provide any other relief arising out of the events.
 - (iv) Open Book Availability of Financial Terms. HTA reserves the right to review all of Design-Builder's underlying assumptions and data associated with pricing, compensation, financial, or business terms or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by HTA to satisfy itself as to the reasonableness of the amount. All discussions between HTA and the Design-Builder on the cost elements of a CSP shall be conducted based on HTA's ability to review all such information.
- (g) Bilateral Change Orders.
- (i) Issuance of Bilateral Change Order. If the Parties agree upon a Change (including any adjustment to the Contract Price or Contract Time), whether it originated as a Change Notice, Request for Change, resolution of Claim, or under any other term of this Agreement allowing for a Change, the Parties shall execute a Bilateral Change Order.
 - (ii) Elements of Bilateral Change Orders. Any Bilateral Change Order executed by both Parties shall:
 - 1) Expressly state that the Work described therein is Changed Work.
 - 2) Include all Changes to the Critical Path Schedule, Completion Deadlines, the Contract Price, and all costs of any nature arising out of the Changed Work.
 - 3) Contain a statement that the adjustment to the Contract Time and Contract Price, if any, includes all time and amounts to which the Design-Builder is entitled as a result of such Changes.
 - (iii) Effect of Execution. The execution of Bilateral Change Order by HTA and the Design-Builder shall be deemed to be an unconditional agreement to all Work at the adjusted Contract Price and Contract Time related to the Change, if any. A Bilateral Change Order shall constitute a full accord and satisfaction of all amounts payable, all time extensions allowable, and all other

claims arising out of the event or Work that is the subject matter of the Bilateral Change Order. There will be no reservation of rights by either Party on a Bilateral Change Order.

- (h) Unilateral Change Orders. If the Parties are unable to agree on adjustments to Contract Price or Contract Time, or to any other issue relating to a Change Order, HTA may, at any time, issue a Unilateral Change Order describing the Changed Work and setting forth the changes to Contract Price and/or Contract Time that HTA determines to be appropriate. The Design-Builder shall promptly proceed to implement such Unilateral Change Order, without prejudice to its rights to pursue dispute resolution under Article XV hereof.
- (i) Change Order Contents and Process.
 - (i) Contents of Change Order. The Change Order shall contain a Change Order value and a Schedule Impact. The Change Order value may be either a lump sum amount or a not-to-exceed amount on a time and materials basis, and shall be the maximum limit of HTA's obligation under the Change Order. HTA may unilaterally, or by agreement with the Design-Builder, revise the Change Order value and/or the Schedule Impact, based upon a Design-Builder's CSP, other additional information, or other forward-pricing subsequent to the initial determination.
 - (ii) Notice of Intent to Claim (NOIC) and Claim. If the Design-Builder disputes either the Change Order value or the Schedule Impact of a Change Order, and has not theretofore waived its rights or failed to meet the conditions to submit a Claim, it shall submit its NOIC and its Claim to HTA in accordance with Article XIV, within the time limits set forth therein.
 - (iii) Restriction on Work. The Design-Builder shall not commence performance of the Work described in the Change Order until HTA executes the Change Order and transmits it to the Design-Builder or HTA provides written direction as described above. Any Work performed by the Design-Builder without a Change Order or direction from HTA will be at the Design-Builder's risk and expense.
 - (iv) Maintenance of Records. Until such time as the Parties agree to any Changes arising out of a Change Order and execute a Bilateral Change Order, or they resolve any Dispute pursuant to Article XV, the Design-Builder shall maintain its records in accordance with Section 17.4 hereof.
 - (v) Payments. Pending a bilateral Change or resolution of any Dispute, payment for the Work in a Change Order with a not-to-exceed dollar amount shall be pursuant to Section 9.3 below. The Design-Builder shall submit reports of Work, on forms prescribed or Approved by HTA, within one (1) Day after performance of the Work. All back-up records and reports (i.e. time sheets) shall be certified by the signature of the Design-Builder's representative and acknowledged by HTA's authorized representative. All submittals shall be subject to audit and determinations of the accuracy of the submitted information.
 - (vi) Not to Exceed Amounts. If a Change Order includes a Not-to-Exceed (NTE) amount, the Design-Builder shall notify HTA when seventy-five percent (75%) of that NTE amount has been expended, and shall provide HTA with an estimate of the cost to complete the Changed work.

- (vii) No HTA Liability. Unless the Parties subsequently execute a Bilateral Change Order, HTA shall not be liable to pay any amount in excess of the applicable Change Order value or any increase in Contract Time in excess of the Schedule Impact in the Change Order.
- (j) Delay in Proceeding with Changed Work. If the Design-Builder fails to promptly proceed with work under a Change Order, any resulting delay shall be the responsibility of the Design-Builder and shall not constitute an Excusable Delay or a Compensable Delay.
- (k) Inaccuracies in Preliminary Design. Any cost increases and/or delays which result from unanticipated requirements and obligations of the Design-Builder relating to the Project due to inaccuracies in the Preliminary Engineering Plans shall be the responsibility of the Design-Builder. In such event, no change in the Work shall be deemed to have occurred and no Change Order will be issued for any such cost increases and/or delays.
- (l) No Change Based on Unauthorized Person. Nothing in this Section shall be construed to bind HTA for acts of any person, including its Authorized Representative, who exceeds his or her authority as expressly set forth in the Contract Documents. The Design-Builder shall undertake at its own risk work included in any request, order, or other authorization issued by a person in excess of that person's authority, as provided herein. In addition, HTA may require the Design-Builder to remove or otherwise undo any such unauthorized work, at its sole expense.
- (m) Deleted Work. When a Change Order deletes Work from the Design-Builder's scope, the amount of the reduction in the Contract Price shall be based upon an estimate including a bill of material, a breakdown of labor and equipment costs, and overhead and profit associated with the deleted work. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.
- (n) Audits. The Design-Builder's records pertaining to Changes pursuant to this Section are subject to audit as set forth in Section 17.4 hereof.
- (o) Minor Changes. HTA may, in its discretion, utilize an informal changes process for minor changes to the Work with a value of \$10,000 or less. HTA will provide the Design-Builder with written notice of any such process, detailing the procedures to be followed.

Section 10.02 Categories of Changes to Contract Time Or Contract Price

- (a) Categories of Changes. Change Orders affecting Contract Time or Contract Price are in the following three categories: (1) Excusable Delay; (2) Compensable Delay; and (3) Compensable Event. Each of these categories is described in more detail in the following provisions of this Section.
- (b) Excusable Delay.
 - (i) Effect of Excusable Delay. An Excusable Delay may be the basis for an extension in the Contract Time. Any type of delay not meeting the requirements of this subsection will be considered an inexcusable delay and will not be the basis for an extension in Contract Time.

- (ii) Acts or Events Constituting Excusable Delays. A delay to the Critical Path shall be an Excusable Delay to the extent that:
- 1) The act or event has a material impact on the Critical Path Schedule and has caused, or will result in, an identifiable and measurable disruption of the Work which has consumed all available Float and extended the Work required for Substantial Completion or Final Acceptance beyond the applicable Completion Deadline;
 - 2) The act or event (i) was a Force Majeure event as defined in this Contract or was otherwise beyond the control of the Design-Builder; (ii) was not due to the fault, negligence, failure to act, or willful misconduct on the part of the Design-Builder or any Subcontractor; and (iii) did not arise out of the Design-Builder's failure to perform or meet the requirements of this Contract; and
 - 3) The act or event was unforeseeable and could not reasonably have been avoided by the Design-Builder by using all reasonable and appropriate means and efforts, including re-sequencing the Work or re-allocating or re-deploying its forces to other portions of the Work.
- (iii) Burden of Proof. The Design-Builder shall have the burden of proving that (A) the delay occurred; (B) the delay satisfies each of the required elements of an Excusable Delay as described in paragraph (2) above; (C) the delay could not be fully mitigated; and (D) the Design-Builder has taken reasonable precautions to prevent further delays arising out of such event. The Design-Builder shall also have the burden of establishing the length of time of the Excusable Delay.
- (iv) Consequences of Excusable Delay. Upon adequate proof of an Excusable Delay, the Design-Builder will be granted an extension of time, by execution of a Change Order, and will not be assessed liquidated damages for any days of delay within the excused period. In the event of an extension to a Completion Deadline due to an Excusable Delay, that revised Completion Deadline shall be used to determine whether the Design-Builder is obligated to pay Liquidated Damages under Article XIII hereof. The Design-Builder will not receive compensation for an Excusable Delay unless it is also a Compensable Delay, as described in Section 10.02(c).
- (v) Notice Required. In order to be eligible for an Excusable Delay, the Design-Builder must provide notice HTA describing the act or Event that the Design-Builder asserts was the cause of the delay not more than ten (10) calendar days after the day the act or Event occurs.
- (vi) Multiple Causes of Delay. If a delay arises out of more than one cause, to the extent that the delay is Excusable or Compensable under all the requirements of this Section, the Design-Builder will be entitled to only one extension of the Contract Time for the cumulative change to the Critical Path Schedule.
- (vii) Submittal of Information Regarding Delay. In addition to any other time impact analysis that may be required under the Contract Documents, the Design-Builder shall submit the following information to HTA at the earliest possible date after the Design-Builder provides notice of the

asserted Excusable Delay:

- 1) A detailed description of the act or Event causing the delay;
 - 2) An analysis of the impact of the claimed act or Event causing the delay upon the then-current Critical Path Schedule, identifying the affected activities, the actual impacts and the number of days delayed; and
 - 3) Measures taken and/or proposed to mitigate the claimed delay, and the effects thereof.
- (viii) No HTA Waiver. HTA's granting of an extension of time or the Acceptance of any part of the Work after the time specified shall not constitute a waiver of any of HTA's rights under the Contract other than those specifically provided for in the extension or Acceptance.
- (c) Compensable Delay.
- (i) Effect of Compensable Delay. A Compensable Delay may be the basis for both an extension in Contract Time and an increase in the Contract Price.
 - (ii) Acts or Events Constituting Compensable Delays. A delay in the Critical Path Schedule shall be a Compensable Delay only if it constitutes an Excusable Delay under subsection (b) and only to the extent that the performance of all or any part of the Work is delayed or interrupted by one or more of the following events (but for no other event):
 - 1) HTA-Caused Delays or HTA-Directed Changes.
 - 2) Failure or inability of HTA to obtain Governmental Approvals that are its responsibility under the Contract Documents.
 - 3) Failure or inability of HTA to provide responses, within the time periods specified in the Contract Documents, to submittals and matters for which a response is expressly required by a time certain under the terms of this Contract.
 - (iii) Notice Required. A Change or Claim for a Compensable Delay shall not be allowed for any costs incurred more than ten (10) calendar days before the Design-Builder has notified HTA of the act or Event causing the delay.
 - (iv) Burden of Proof. The Design-Builder shall have the burden of providing that the delay satisfies each of the required elements of an Excusable Delay under subsection (b) hereof and is an act or Event constituting a Compensable Delay under subsection (c)(ii) above.
 - (v) Consequences of Compensable Delay. Upon adequate proof of a Compensable Delay, the Design-Builder will by execution of a Change Order be granted an extension of time and an equitable adjustment to the Contract Price in accordance with Section 10.03 hereof. The Change Order will be the Design-Builder's sole remedy arising out of the Compensable Delay.

(vi) Concurrent Delay.

- 1) *Description.* When an act or event that would otherwise be a Compensable Delay overlaps or runs concurrently with an Excusable (but not Compensable) Delay or with an inexcusable delay, the Design-Builder will be eligible for an Excusable Delay for the time period of the overlapping or currently running delay, but shall be eligible for a Compensable Delay only for that portion of the delay that extends beyond the period of concurrent delay. To the extent that the number of calendar days of delay can be allocated between those that are caused by an Excusable Delay and those that are caused by an inexcusable delay, the Contract Time shall only be extended by the amount of the Excusable Delay.
- 2) *Example.* If there is a forty (40) calendar day Design-Builder caused inexcusable delay and an overlapping fifty (50) calendar day HTA-caused Compensable Delay, the Design-Builder would be eligible for forty (40) calendar days of Excusable Delay and ten (10) calendar days of Compensable Delay.
- 3) *Impact on Critical Path.* Delays will not be treated as Concurrent to the extent that one delay affects the Critical Path Schedule and the other delay does not. In that event, the sole delay will be the one that affects the Critical Path Schedule.
- 4) *Sole Remedy.* The Change Order extending Contract Time for a Concurrent Delay will be the Design-Builder's sole remedy arising out of the Concurrent Delay.

(d) Compensable Events.

- (i) Effect of Compensable Events. A Compensable Event may be the basis for the increase in the Contract Price.
- (ii) Acts or Events Constituting Compensable Events. An increase in the Contract Price shall be allowed hereunder only for changes in the Work that are directly attributable to the following Events and otherwise meet the requirements set forth in this Section:
 - 1) HTA-Caused Delays or HTA-Directed Changes;
 - 2) A Force Majeure Event, to the extent of loss, damage, or cost that is in excess of or is not covered by insurance required to be provided hereunder, subject to paragraph (3) below;
 - 3) The discovery of Hazardous Materials that require remediation or removal and that were not identified as the date of execution of this Contract, provided that the Design-Builder satisfies the notice and other requirements in Section 6.03 and 6.04 hereof;
 - 4) The discovery at the Site of Differing Site Conditions; provided that the Design-Builder satisfies the notice and other requirements in Section 6.05 hereof;

- 5) An event constituting a Compensable Delay.
- (iii) Force Majeure Events. Additional compensation will be allowed for the Design-Builder's additional direct costs arising from Force Majeure Events if the Design- Builder demonstrates to the satisfaction of HTA that the additional costs, including any costs arising from a delay in the performance of the Work, were not due to the acts, omissions, fault, breach, negligence, recklessness or willful misconduct of any of the Design-Builder or any Design-Builder-Related Entity and could not have been avoided or prevented by due diligence and use of reasonable efforts by the Design-Builder or any Design-Builder-Related Entity.
 - (iv) Hazardous Materials and Differing Site Conditions. The discovery of Hazardous Materials or of Differing Site Conditions that satisfies the criteria in paragraphs 2)(C) or 2)(D) above, as applicable, may constitute a Compensable Delay under subsection (c) hereof if such discovery also constitutes an Excusable Delay under subsection (b).
 - (v) Burden of Proof. The Design-Builder shall have the burden of proving that an act or event constitutes a Compensable Event that satisfies all the requirements of this Section.
 - (vi) Limitation on Contract Price Increases. -- Any increase in the Contract Price allowed under this Section shall exclude:
 - 1) Costs caused by the fault or negligence, the failure to perform or meet the requirements of the contract, or the breach of Contract, by the Design- Builder, a Subcontractor, or any Design-Builder-Related Entity;
 - 2) Costs which could reasonably have been avoided by the Design- Builder by use of all reasonable and appropriate means and efforts, including resequencing the Work or reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment); and
 - 3) Costs for any rejected Work that failed to meet the requirements of the Contract Documents and for any necessary remedial Work.
 - (e) Acceleration Costs. Acceleration Costs shall be compensable hereunder only if the Design-Builder establishes that (a) such costs result from a Change Order issued by HTA as an alternative to allowing an extension of the Contract Time; (b) the delay which causes such Change Order to be issued was an Excusable Delay; and (c) the Design-Builder in fact accelerated its performance and incurred additional costs. Costs of rearranging the Design- Builder's work plan to accommodate Changes directed by HTA not associated with an extension of the Contract Time shall not be compensable hereunder.

Section 10.03 Basis for Establishing Costs Associated With Change.

- (a) Determination of Amount Payable. The amount payable for a Change is the sum of all eligible costs, as described herein, that the Design-Builder necessarily incurs to perform the Work and a

mark-up for overhead and profit, as described in this Section.

(b) Ineligible Costs. The amount payable for Changed Work shall not include the following Ineligible costs:

- (i) Costs caused by the breach of contract or fault or negligence, or act or failure to act of the Design-Builder, or any Subcontractor, or any Design-Builder Related Entity; and
- (ii) Costs which could reasonably be avoided by the Design-Builder, including resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, adjusted for any additional costs reasonably incurred in connection with such reallocation or redeployment.

(c) Eligible Costs. The amount payable for Changed Work may include the following eligible costs:

(i) Labor Costs.

- 1) Labor cost shall be based, as a minimum, on the prevailing wage scale for each craft or type of Work used in the Changed Work, as well as payroll taxes and fringe benefits, as applicable. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost and shall not apply to the premium-time component.
- 2) Labor reports shall include names, hours worked, and rates of pay for all classifications that are engaged in the actual direct performance of the Changed Work. Labor costs shall not include costs for management personnel above foreman, office personnel, timekeepers, and maintenance mechanics.

(ii) Material Costs. Material costs shall be the cost of all Goods purchased and/or constructed by the Design-Builder and used in the Changed Work, including normal wastage allowance as per industry standards. The cost shall include freight, delivery, unloading, storage charges, taxes, and all Supplier discounts. The prices shall be supported by valid invoices or binding written quotations from reputable Suppliers, or shall be prices from existing purchase orders, blanket purchase orders or other ordering agreements standard in the industry. The invoices or quotations shall be made available to HTA upon request. HTA reserves the right to review and Approve Goods and sources of supply of Goods to be furnished by the Design-Builder or its Subcontractor(s), as well as the right to furnish the Goods to the Design-Builder if necessary to facilitate the progress of the Work.

(iii) Construction Equipment Costs. The rates described in this Paragraph include the costs of Construction Equipment, plus the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals, subject to the following:

- 1) Construction Equipment costs shall not include costs for items normally considered Design-Builder plant or fixed costs items (such as buildings, trailers, office equipment, utilities, rail,

pipng, electrical distribution systems, processing plants, material handling facilities, work platforms, scaffolding, and concrete forms).

- 2) Construction Equipment reports shall include size, type, identification number, rental rate (if applicable), and hours of operation.
- 3) Construction Equipment and tools having a replacement value of \$200 or less, whether or not consumed or used, shall be considered small tools and no payment shall be made for them.
- 4) Equipment ownership fixed costs shall be limited to the following for multiple shift operations:
 - a) *Overhead* -- at the hourly overhead rate listed in the Rental Rate Blue Book for Construction Equipment (published by Equipment Watch, most current version, hereinafter Rental Rate Blue Book) for the first shift each day and at five percent (5%) of that same hourly rate for the second shift each day. No additional overhead costs will be allowed for a third shift; and
 - b) *Depreciation* -- the hourly depreciation rate listed in the Rental Rate Blue Book for the first shift each day and at fifty percent (50%) of that same hourly rate for the second and third shifts each day.
- 5) HTA shall pay Design-Builder for the use of Design-Builder owned Construction Equipment at the total hourly cost rates listed for such Construction Equipment in the Rental Rate Blue Book, which edition shall be the latest edition in effect at the time the Changed Work is performed. No adjustment to the total hourly cost rates listed in the Rental Rate Blue Book shall be made except as stated in this Paragraph for multiple shift operations and standby.
- 6) If it is deemed necessary by the Design-Builder to use Design-Builder owned specialized Construction Equipment not listed in the applicable edition of the Rental Rate Blue Book, the Design-Builder shall submit all cost data to HTA for its use in establishing the rate.
- 7) If the Design-Builder determines it is necessary to use rental Construction Equipment due to the lack of availability of Design-Builder-owned Construction Equipment to perform the Changed Work, the Design-Builder shall submit the cost data, including written quotes, published price lists and paid invoices to HTA for use in verification of such rental cost. HTA will pay for Construction Equipment rented under lease-purchase or sale-leaseback arrangements, or rented from an organization under control of the Design-Builder or under common control with the Design-Builder, at the rates set forth in the Rental Rate Blue Book for Construction Equipment.
- 8) Construction Equipment operators shall be paid for as stipulated in the Paragraph above entitled Labor Costs.
- 9) All Construction Equipment shall be in good working condition and suitable for the purpose

for which it is to be used.

- 10) Unless otherwise specified, manufacturer-approved modifications shall be used to classify Construction Equipment for the determination of applicable rental rates. Applicable rental rates for Construction Equipment that has no direct power unit shall be based on being powered by a unit of at least the minimum rating recommended by the manufacturer of that Construction Equipment.
- 11) HTA will not pay compensation for Construction Equipment while it is inoperative due to breakdown, routine maintenance or other Design- Builder controlled or planned down time.
- 12) Except as otherwise specified in this Article, time will be computed in half and full hours. In computing the time for use of Construction Equipment, less than 31 minutes shall be considered one-half hour.
- 13) After Construction Equipment is idle for 16 hours in a 24 hour period it shall be deemed to be on standby, and compensation for such Construction Equipment shall be limited to the sum of the hourly overhead and depreciation rates for eight (8) hours per twenty-four (24) hour period.
- 14) The time shall include the time required to move the Construction Equipment to the location of the Work covered by the Change (Changed Work) and return it to the original location (or to another location requiring no more time than that required to return it to its original location). Loading and transporting costs shall be allowed, in lieu of moving time, when the Construction Equipment is moved by means other than its own power. No payment for loading and transporting shall be made if the Construction Equipment is also used at the Worksite for other than the Changed Work.
- 15) The Construction Equipment use period shall:
 - a) Begin at the time the Construction Equipment is unloaded at the site of the Changed Work during standard work hours;
 - b) Include each day that the Construction Equipment is at the Worksite of the Changed Work, excluding Saturdays and Sundays and other legal holidays unless such Work is performed on those days; and
 - c) Terminate at the end of the day on which the Work is completed or HTA instructs the Design-Builder to discontinue the use of such Construction Equipment.
- 16) The Design-Builder shall substantiate the costs of all rented Construction Equipment by the Supplier's invoices or, if the work has not yet been started, by signed quotes or published rate sheets, submitted with the current reports; or, if not then available, submitted with subsequent reports. If the Design-Builder does not submit Supplier's invoices within thirty (30) calendar days after completion of the Changed Work, or if in HTA's opinion the cost of

such rented Construction Equipment is excessive, then the cost of such Equipment shall be determined utilizing the guides listed in Paragraph (3) (D) above.

- 17) No additional compensation shall be allowed for Construction Equipment used to perform Changed Work if such Equipment is already on the Worksite and being used or will be used for other than the Changed Work.

(iv) Overhead and Profit.

- 1) HTA will pay the Design-Builder the following mark-ups on direct costs for overhead and profit on Changed Work as follows: (i) Fifteen percent (15%) for direct construction labor costs. (ii) Ten percent (10%) for material costs, (iii) Ten percent (10%) for Construction Equipment use costs, and (iv) Fifteen percent (15%) for engineering labor costs.
 - 2) The mark-ups for overhead include and are full compensation for all indirect costs of any nature, including without limitation home and field office overhead, all taxes of any nature (except taxes covered herein under labor or material costs), all insurance costs (including Workers' Compensation insurance) and any increases in such costs, Performance Bond and Payment Bond premium adjustments, small tools, incidental job burdens, incidental engineering costs (if any), and all other indirect costs of the Changed Work.
 - 3) Incidental engineering costs, as referred to in the previous Paragraph, which shall be included in the overhead mark-up, shall include all time spent by Design-Builder engineers or other personnel or consultants for RFI, RFC, and CSP preparation, Change Order administration, preparation and coordination of shop drawings, attendance at meetings, inspections scheduling, estimating, Claim preparation, submittal preparation and review, mix and shoring design and all other tasks normally performed by Design-Builders as part of the Work under similar construction contracts.
 - 4) HTA will not pay a mark-up for Work with Unit Prices or for HTA Furnished Goods.
- (v) Subcontractor Costs. HTA will pay the Design-Builder a single five percent (5%) mark-up for Changed Work performed by Subcontractors, other than Subcontracts with Affiliates. When a Subcontractor performs Changed Work, that Subcontractor will be allowed the same markups as provided in paragraph 4) above. HTA will not pay mark-ups for any Goods furnished by HTA or any Third Party.
- (vi) Credit Items. Where the Design-Builder's portion, or any Subcontractor's portion (at any tier), of a Change involves credit items, or the proposed Change is a fully deductive Change, the Design-Builder shall utilize the same mark-ups in computing the value of the credit.
- (vii) Bond Costs. Changes to the cost of the Performance Bond and Payment Bond are covered in the Design-Builder's mark-ups under paragraph 4) above.
- (d) Work During Suspension or Delay. To avoid any duplicate payment of overhead or profit, if the Design-Builder performs any Work under a Change Order during a period of Suspension or Delay

which results in a time extension, the mark ups for overhead and profit paid under this Section for the Change Order for that period shall be deducted from any extended overhead or profit that may be otherwise payable to the Design-Builder under this Contract for the Suspension or Delay.

- (e) Increased or Decreased Quantities. The Design-Builder is responsible for estimating quantities for the Project. Increases or decreases from the Design-Builder's estimates used as the basis for the Price Proposal or the Schedule of Values shall not result in an increase or decrease in the Contract Price.

ARTICLE XI. WARRANTIES RELATED TO THE WORK

Section 11.01 Warranty.

- (a) Elements of Warranty. The Design-Builder warrants that:
 - (i) All Preliminary Engineering and Design Work, based on the Contract Documents, shall conform to all professional architectural and engineering principles generally accepted as standards of the industry in the State of California, and that the Work shall be constructible as designed.
 - (ii) The Work shall be free of Defects or Deficiencies, including design errors; shall be fit for use for the intended function; and shall meet all of the requirements of the Contract Documents.
 - (iii) The Goods furnished shall be new and of a quality that meets all of the requirements of the Contract Documents.
- (b) Reservations. The foregoing warranties are in addition to all rights and remedies available under applicable law.

Section 11.02 Warranty Term.

- (a) General. The Design-Builder's general Warranty for the Work shall commence at Final Acceptance and shall remain in effect until one (1) year after the Final Acceptance Date, unless a longer period is provided in Subcontractor or Supplier warranties under subsection (c) below or is established for certain Equipment under the Contract Documents.
- (b) Extensions to Correct Work. If HTA determines that any of the Work has not met any Contract requirements at any time within the Warranty period and so notifies the Design-Builder, then the Design-Builder shall correct such Work, even if the period of time required to perform such corrective Work extends beyond the applicable warranty period stated in subsection (a) or (b). HTA and the Design-Builder shall conduct a walkthrough of the Site at regular intervals during the Warranty period, but at least every six (6) months, and shall produce a punch list of those items requiring Warranty Work.
- (c) Subcontractor and Supplier Warranties. The Warranty period for any Subcontractor or Supplier

work shall be the longer of the period stated in this Section or the period specified in the particular Subcontractor or Supplier Warranty.

Section 11.03 Remedy and Corrections.

- (a) Notice and Duty to Correct. If HTA determines that any Work fails to meet any Contract requirements, HTA shall notify the Design-Builder and the Design-Builder shall correct, repair, or replace such Work at its sole expense.
- (b) Remedy by Design-Builder.
 - (i) Required Actions. Within seven (7) calendar days of receipt by the Design-Builder of notice from HTA specifying a failure to meet any Contract requirements, the Design-Builder and HTA shall mutually agree on how the Design-Builder will remedy such violation and correct the Work and the time allowed for such correction, which absent special circumstances shall not exceed ten (10) calendar days. The Design-Builder's proposed corrective action must address, at a minimum, the construction remedy and the schedule for performing and completing the corrective work. However, in case of an emergency or hazard to health or safety requiring immediate corrective action, the Design-Builder shall implement such action as it deems necessary and shall notify HTA of the urgency of a decision on a remedy and correction. The Design-Builder and HTA shall agree on such remedy and correction immediately upon notice by or to HTA of such emergency.
 - (ii) Failure to Act. If the Design-Builder does not use its best efforts to proceed to effectuate such remedy and correction within the agreed time, or if the Design-Builder and HTA fail to reach such an agreement within the 7-day period described in paragraph (1) above (or immediately, in the case of emergency conditions), then HTA may exercise its rights under any Warranty Bond or, after notice to the Design-Builder, shall have the right to perform (or have performed by other parties) the necessary remedy and correction to the Work, and the costs thereof shall be borne by the Design-Builder.
- (c) Permits and Costs. The Design-Builder shall be responsible for obtaining any required permit, license, or other consent necessary to perform Warranty Work. The Design-Builder shall bear all costs of Warranty Work, including additional testing and inspections, and shall reimburse HTA for any expenses they may incur in connection with such testing and inspections within ten (10) calendar days after the Design-Builder's receipt of requests for payment.
- (d) Emergency Repairs. If HTA determines that emergency repairs to the Work are necessary for public safety, HTA may directly perform the corrective work. Emergency repairs will be coordinated with the Design-Builder to the maximum extent feasible under the circumstances presented. The Design-Builder shall be responsible for the costs of all emergency repairs that are covered by the Design-Builder's Warranty under this Article.

Section 11.04 Warranty on Corrected Work. Warranties shall apply to all Work that is re-done, corrected, or replaced pursuant to the terms of this Contract. In the event any Work is re-done, corrected, or replaced, the Warranty for such Work shall extend to the later of (a) one (1) year after acceptance by HTA of the re- done, corrected, or replaced Work, or (b) the expiration of the applicable Warranty term, provided that the Warranty for re-done, corrected, or replaced Work shall not extend beyond one (1) year after the expiration of the original applicable Warranty term.

Section 11.05 Subcontractor and Supplier Warranties.

- (a) Warranty Requirements. -- The Design-Builder shall obtain from all Subcontractors and Suppliers, and cause to be extended or transferred to HTA, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors or Suppliers. All representations, warranties, guarantees and obligations of Subcontractors and Suppliers shall be written so as to survive all HTA and Design-Builder inspections, tests and approvals, and shall run directly to and be enforceable by the Design-Builder and/or HTA and their respective successors and assigns. The Design-Builder hereby assigns to HTA all of Design-Builder's rights and interest in all extended Warranties for periods exceeding the applicable Warranty period that are received by the Design-Builder from any of its Subcontractors or Suppliers.
- (b) Enforcement.
 - (i) Responsibility of Design-Builder. Upon receipt from HTA of notice of a failure of any of the Work to satisfy any Subcontractor or Supplier warranty, representation, guarantee, or obligation, the Design-Builder shall be responsible for enforcing or performing any such representation, warranty, guaranty, or obligation.
 - (ii) Time Period. The rights of HTA under this Section shall commence at the time such representation, warranty, guaranty, or obligation is furnished or becomes effective under the terms of this Article, and shall continue until the expiration of the Design-Builder's relevant applicable Warranty (including extensions for re-done Work) or of the Subcontractor or Supplier Warranty if longer. Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be the responsibility of the Design-Builder, and the Design-Builder shall be required to replace or repair defective equipment, material or workmanship furnished by the Subcontractor or Supplier.
 - (iii) Design-Builder Liability. To the extent that any Subcontractor or Supplier Warranty is voided in whole or part by reason of any act or omission of the Subcontractor, Supplier, or Design-Builder, the Design-Builder shall still be fully liable to the extent of such Warranty.

Section 11.06 Damages and Other Remedies. The Design-Builder shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work. The Design-Builder Warranties and Subcontractor Warranties in this Article are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Design-Builder's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

Section 11.07 Approval of Non-Conforming Work.

- (a) Duty to Reimburse HTA. If HTA Approves any non-conforming Work without requiring it to be fully corrected, the Design-Builder shall reimburse HTA a portion of the Contract Price in an amount equal to the greater of:
 - (i) The difference in the present value of the Work, plus the present value of additional operating and maintenance costs over twenty (20) years, if any, caused by such nonconforming Work; or
 - (ii) The Design-Builder's cost savings for not correcting the Work (in other words, the present value of the Work not performed).
- (b) Additional Reimbursement. In addition to the reimbursements under subsection (a), the Design-Builder shall reimburse HTA for costs it incurs in making the determinations described in subsection (a) above, including but not limited to staff costs, experts, tests and other necessary reviews and actions. Such reimbursement shall be payable to HTA within ten (10) calendar days after the Design-Builder's receipt of HTA's demand for payment. In the alternative, HTA may deduct the amount owed to HTA under this subsection or subsection (a) hereof from any payments otherwise due the Design-Builder.

Section 11.08 Disputes. Any disagreement between HTA and the Design-Builder relating to this Article shall be subject to the dispute resolution provisions in Article XV hereof; provided that the Design-Builder shall proceed as directed by HTA pending resolution of the Dispute.

ARTICLE XII. CONSTRUCTION WORK COMPLETION AND ACCEPTANCE

Section 12.01 Completion Deadlines. The Design-Builder shall comply with the Substantial Completion Deadline and Final Acceptance Deadline set forth in Section 3.03 hereof, subject to any extension or adjustment in any such Deadline pursuant to a Change Order issued under Article X hereof.

Section 12.02 Substantial Completion.

- (a) Application for Substantial Completion. The Design-Builder shall deliver an Application for Substantial Completion to HTA when all of the following have occurred:
 - (i) The Design-Builder has ensured that all Work has been performed and substantially completed in accordance with the requirements of the Contract Documents;

- (ii) The Design-Builder has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person;
 - (iii) The Design-Builder has furnished to HTA a certification from the Design-Builder's Design Manager certifying conformity of the Design Documents with the requirements of the Contract Documents;
 - (iv) The Design-Builder has furnished to HTA a certification from the Design-Builder's Quality Manager (in a form and substance acceptable to HTA) certifying material conformity of the Construction Work with the Design Documents;
 - (v) The Design-Builder has completed the Commissioning process as stipulated in the RFP, and HTA has received and Approved all safety certifications and commissioning reports as required by the Contract Documents;
 - (vi) The Design-Builder has completed the Operational Performance Testing process as stipulated in the RFP, and completed all safety testing required by the Contract Documents.
 - (vii) All on-Site Work by or for Utility Owners has been completed and all Utility Owner approvals have been received by the Design-Builder; and
 - (viii) The Design-Builder has received all applicable Governmental Approvals required for Project use.
- (b) HTA Review and Inspection. Upon receipt of Design-Builder's Application for Substantial Completion, HTA shall conduct such inspections, surveys, and/or testing, as it deems necessary and appropriate. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of the Contract Documents, HTA will promptly advise the Design-Builder as to any errors, omissions, deviations, Defects, or Deficiencies in the Work necessary to be corrected as a condition to Substantial Completion. The Design-Builder shall make such corrections at its sole expense. Upon correction of the errors, omissions, deviations, Defects, or Deficiencies identified as a prerequisite to Substantial Completion, the Design-Builder shall provide written notification to HTA, and HTA shall conduct another round of inspections, surveys, and/or tests. This procedure shall be repeated until HTA determines that all prerequisites to Substantial Completion have been met.
- (c) Required Elements of Substantial Completion. Substantial Completion of the Project shall be deemed to have occurred when:
- (i) HTA determines that all conditions and requirements set forth in this Section have been satisfied;
 - (ii) HTA determines that all errors, omissions, deviations, Defects, and Deficiencies identified as prerequisites to Substantial Completion have been corrected; and

- (iii) HTA, after consultation with the Design-Builder, has established a Punch List of items remaining to be completed or corrected before Final Acceptance.
- (d) Certificate of Substantial Completion. HTA will issue a Certificate of Substantial Completion to the Design-Builder at such time as HTA determines that Substantial Completion has occurred, under the standards and criteria set forth herein. Such Certificate shall specify the date on which Substantial Completion occurred.
- (e) Responsibility to Complete the Work. Notwithstanding any other provision of this Contract, it shall be the Design-Builder's continuing responsibility to complete and deliver every element, and the integrated whole, of the Work in accordance with all of the requirements of the Contract. The issuance of a Certificate of Substantial Completion by HTA for any element, or for the whole of the Work, shall not be construed to relieve the Design-Builder of this responsibility, or any part thereof. If, after the issuance of a Certificate of Substantial Completion, HTA discovers any Deficiency, or item not completed or otherwise requiring correction or remedial action, whether or not the item appears on any Punch List or other list of clean up items, the Design-Builder shall correct the Deficiency, complete the item, or otherwise remedy the condition to bring it into full compliance with the Contract.

Section 12.03 Partial Use or Occupancy.

- (a) Prior to Substantial Completion of all the Work, HTA may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which HTA, Engineer, and Design-Builder agree constitutes a separately functioning and usable part of the Work that can be used by HTA for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Work, subject to the following conditions:
 - (i) At any time, HTA may request in writing that Design-Builder permit HTA to use any such part of the Work that HTA believes to be Substantially Complete. If and when Design-Builder agrees that such part of the Work is Substantially Complete, Design-Builder and HTA will follow the procedures of Section 12.02 for that part of the Work.
 - (ii) At any time, Design-Builder may notify HTA in writing that Design-Builder considers any such part of the Work Substantially Complete and request HTA to issue a Certificate of Substantial Completion for that part of the Work.
 - (iii) Within a reasonable time after either such request, HTA and Design-Builder shall make an inspection of that part of the Work to determine its status of Substantial Completion. If HTA does not consider that part of the Work to be Substantially Complete, HTA will notify Design-Builder in writing giving the reasons therefor. If Design-Builder considers that part of the Work to be Substantially Complete, the provisions of Section 12.02 will apply with respect to Certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - (iv) No use or occupancy or separate operation of part of the Work may occur prior to compliance

with the requirements of Paragraph 6.04 regarding Builder's Risk or other property insurance.

Section 12.04 Punch List Completion. Following Substantial Completion of all Work, the Design-Builder shall be responsible for completing the items on the Punch List. When the Design-Builder believes that it has completed all items on the Punch List, it shall so notify HTA and request a determination the Punch List Completion has been satisfied. At the time HTA determines all such items have been completed, HTA shall notify the Design-Builder that it has completed the Punch List and the date on which Punch List Completion occurred.

Section 12.05 Final Acceptance.

- (a) Required Elements of Final Acceptance. Prior to submitting a Request for Final Acceptance, the Design-Builder shall perform all Work on the Punch List and shall satisfy all of its other obligations under the Contract Documents, including ensuring that the Work has been completed and all components have been properly inspected and tested. The Design-Builder shall then submit a Request for Final Acceptance to HTA. Final Acceptance of the Work shall be deemed to have occurred when all of the following have occurred:
 - (i) All requirements for Substantial Completion and Punch List Completion have been fully satisfied;
 - (ii) The Design-Builder has delivered to HTA a certification representing that there are no outstanding Claims of the Design-Builder, or Claims, liens, or stop notices of any Subcontractor or laborer with respect to the Work, along with unconditional releases from all first tier Subcontractors and any lower tier Subcontractors that have filed stop notices during the term of the Contract. For purposes of such certification, the term "Claim" shall include all matters or facts that may give rise to a Claim;
 - (iii) All of the Design-Builder's personnel, supplies, waste, Materials, facilities, and Equipment have been removed from the Site, and the Design-Builder has restored and repaired the Site in good working order and condition, including remediation and/or disposal of any Hazardous Materials;
 - (iv) HTA has received and Approved the assignment of all Subcontractor's and Supplier's Warranties;
 - (v) HTA has received and Approved all Design Documents, record documents, original working drawings and shop drawings, As-Built Drawings, Right-of-Way record maps, surveys, test data and reports, and other deliverables required under the Contract Documents;
 - (vi) HTA has received and Approved the following Plans: Operations and Maintenance Plan; Hydrogen Safety Plan; Emergency Response Plan; Staffing Plan; Training Plan, and Hydrogen Fuel Purchase and Delivery Plan. HTA shall review each of these Plans and may, in its discretion, require such reasonable modifications or additions to such Plans as it determines to be necessary and appropriate. Upon Approval, each Plan shall be incorporated into and made part of the Contract Documents, and shall constitute a binding obligation hereunder;

- (vii) Forty (40) hours of training have been provided to HTA personnel in the operation of the Hydrogen Fueling Station;
 - (viii) All Equipment and other Goods purchased by the Design-Builder as provided in the Contract have been delivered to and Approved by HTA, free and clear of liens, and the fueling station and all Equipment have been fully commissioned;
 - (ix) All of the Design-Builder's obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance) have been satisfied in full or waived in writing by HTA;
 - (x) The Design-Builder has delivered to HTA a Notice of Completion for the Project in recordable form and meeting all statutory requirements; and
 - (xi) The Design-Builder has provided HTA a Warranty Bond (if required) and has identified a single point of contact to address the Warranty requirements of this Contract throughout the duration of the Warranty term.
- (b) Certification of Final Acceptance. HTA will inspect the Work within ten (10) Business Days after receipt of the Request for Final Acceptance, and will issue a Certificate of Final Acceptance to the Design-Builder at such time as HTA determines that the requirements for Final Acceptance have been satisfied, under the standards and criteria set forth in this Section. The Certificate shall specify the date on which Final Acceptance occurred. If HTA rejects the Request for Final Acceptance, specifying Deficiencies or uncompleted portions of the Work, the Design-Builder shall, at its own cost and expense, promptly remedy the Deficiencies or uncompleted portions of the Work. Thereafter, the Design-Builder shall again submit to HTA a written Request for Final Acceptance of the Work, in accordance with the above process.
- (c) Transfer of Responsibility for Maintenance. Upon HTA's issuance of a Certificate of Final Acceptance, HTA shall be responsible for the maintenance of the Work, and the Design-Builder shall be relieved of that responsibility, except as follows:
- (i) The Design-Builder shall be obligated to complete any element of the Work that was not completed if such non-completion was not disclosed to HTA (regardless of whether such nondisclosure were fraudulent, negligent, or otherwise);
 - (ii) The Design-Builder's action, negligence, or breach of this Contract or the Warranty causes loss or damage to the Work or any element thereof;
 - (iii) The Work or any element thereof remaining within the custody or control of the Design-Builder;
 - (iv) Responsibility remains with the Design-Builder pursuant to the terms of the Certificate of Final Acceptance; and

- (v) Responsibility for O&M services as set forth in Article VII.
- (d) Exceptions. Final Acceptance shall be final and conclusive except for
 - (i) Defects not readily ascertainable by HTA;
 - (ii) Actual or constructive fraud;
 - (iii) Gross mistakes amounting to fraud;
 - (iv) Other errors which the Design-Builder knew or should have known about;
 - (v) The rights of HTA under any warranty or guarantee; and
 - (vi) HTA's right to recover any overpayment to the Design-Builder for failure to fulfill its obligations under the Contract Documents. HTA may revoke Final Acceptance at any time prior to the issuance of the final payment by HTA upon HTA's discovery of such defects, mistakes, fraud, or errors in the Work.

Section 12.06 Passage of Title. The Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all Materials, Goods, equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for HTA for the operation, maintenance, or repair of the Project, free and clear of all liens. Title to all of such Materials, Goods, equipment, tools, and supplies which have been delivered to the Site shall pass to HTA, free and clear of all liens, upon the earlier of incorporation into the Project, or payment by HTA to the Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, the Design-Builder shall retain sole care, custody and control of such Materials, Goods, equipment, tools, and supplies and shall exercise due care with respect thereto, as part of the Work, until the Final Acceptance Date or until the Design-Builder is removed from the Project.

ARTICLE XIII. LIQUIDATED DAMAGES AND LIMITATIONS ON LIABILITY

Section 13.01 Liquidated Damages.

- (a) Agreement on Damages.
 - (i) Damages to HTA. Time is an essential element of this Contract and is of the essence. The cost to HTA of the administration of this Contract, including engineering, inspection, and supervision, will be increased as the time occupied by the Work is lengthened. Further, the public is subject to harm and inconvenience when full use cannot be made due to an incomplete project, and/or traffic is disrupted and impacted by the Project. The Design-Builder understands and agrees that if it fails to complete the Work in accordance with the Contract Documents, HTA will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, the Design-Builder and HTA have agreed to stipulate the amount payable by the Design-Builder in the event of its failure to meet a Completion Deadline or to otherwise comply with certain Contract schedule requirements.

- (ii) Purpose of Liquidated Damages. The Design-Builder acknowledges and agrees that Liquidated Damages are intended to compensate HTA solely for the Design-Builder's failure to meet the Completion Deadline(s) that are set forth in the Contract Documents, or for failure to comply with other Contract schedule requirements, and shall not excuse the Design-Builder from liability from any other breach of requirements in the Contract Documents, including any failure of the Work to conform to applicable requirements. The fact that HTA has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude HTA from exercising its other rights and remedies regarding any such delay.
- (b) Categories and Amounts of Liquidated Damages.
 - (i) Failure to Achieve Substantial Completion. In the event the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Deadline, the Design-Builder agrees to pay to HTA Liquidated Damages in the amount of \$2,500 per calendar day as compensation for HTA's additional costs of administering this Contract (including engineering, legal, accounting and administrative costs) and for inconvenience to the public due to delays, commencing on the day after the Substantial Completion Deadline and ending on the date Substantial Completion is achieved.
 - (ii) Failure to Achieve Final Acceptance. In the event the Design-Builder fails to achieve Final Acceptance by the Final Acceptance Deadline, the Design-Builder agrees to pay to HTA Liquidated Damages in the amount of \$2,500 per calendar day as compensation for HTA's additional costs of administering this Contract (including engineering, legal, accounting and administrative costs) and for inconvenience to the public due to delays, commencing on the day after the Final Acceptance Deadline and ending on the date Final Acceptance is achieved.
- (c) Cap on LDs. In no event shall Liquidated Damages assessed under this Section be more than ten percent (10%) of the Contract Price.
- (d) Reasonableness of Liquidated Damages. The Design-Builder acknowledges and agrees that the foregoing damages have been set based on an evaluation by HTA of damages to HTA and the public caused by late completion. The Design-Builder and HTA agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix Design-Builder's costs and to avoid later disputes over which items are properly chargeable to the Design-Builder. It is understood and agreed by the Design-Builder that any Liquidated Damages payable in accordance with this Article are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. The Design-Builder further acknowledges and agrees that Liquidated Damages may be owed even though no Event of Default has occurred.
- (e) Payment and Deductions. Liquidated Damages shall be payable by the Design-Builder to HTA within ten (10) calendar days after the Design-Builder's receipt of an invoice therefor from HTA. In addition, HTA shall have the right to deduct any amount owed by the Design-Builder to HTA

hereunder from any amounts owed by HTA to the Design-Builder, including any retainage which may be payable by HTA to the Design-Builder.

- (f) No Waiver. Permitting or requiring the Design-Builder to continue and finish the Work or any part thereof after the Substantial Completion Deadline shall not act as a waiver of HTA's right to receive Liquidated Damages hereunder or any other rights or remedies available to HTA under this Contract.
- (g) Independent and Cumulative Damages. The categories of Liquidated Damages in this Article are independent in nature and may be cumulative; the assessment of one category does not affect HTA's right to assess and collect a different category.

Section 13.02 Limitation of Design-Builder's Liability.

- (a) Overall Limitation. The Design-Builder's liability to HTA for damages resulting from breach of the Contract shall not exceed the sum of (1) all those costs reasonably incurred by HTA or any party acting on HTA's behalf in completing or correcting the Work or having the Work completed or corrected by another Person; plus (2) an amount equal to twenty percent (20%) of the Contract Price (which amount shall specifically include any Liquidated Damages paid pursuant to this Article as well as any payments made by the Design-Builder pursuant to its indemnification obligations under the Contract Documents, but shall specifically exclude any amounts paid by the Design-Builder that are covered by insurance proceeds.
- (b) Exclusion From Limitation. This limitation of liability shall not apply with regard to any illegal activities, fraud, criminal conduct, gross negligence, recklessness, or intentional misconduct on the part of the Design-Builder or any Design-Builder-Related Entity.

ARTICLE XIV. CLAIMS

Section 14.01 Notice of Intent to Claim (NOIC).

- (a) Conditions to Claim. As a condition to pursuing any Claim under this Contract, the Design-Builder must meet all requirements set forth in this Article.
- (b) Bases for Claims. A Claim for a time extension may only be based on an Event that is beyond the control of the Design-Builder and is not due to an act or omission of the Design-Builder and which Event (or the effects of which Event) could not have been avoided by due diligence and use of reasonable efforts by the Design-Builder, as long as the entitlement to an adjustment of the Contract Price or Contract Time for such event is not otherwise expressly or implicitly precluded by this Contract. A claim for payment of money must be based on a specific provision of the Contract Documents allowing a Contract Price increase.
- (c) Time Limits. The Design-Builder shall, as a condition precedent to a Claim, submit a written Notice of Intent To Claim (NOIC) to HTA within ten (10) calendar days after the Design-Builder first becomes aware of the decision, action, order, or position ("Event") giving rise to such Claim,

except for Claims that may arise out of the completion of Punch List Items, which must be submitted prior to the Request for Final Acceptance. The parties may agree in writing, to postpone the time limit for submission of an NOIC to facilitate the exchange of information concerning a Request for Change. Absent such agreement, failure to comply with these time limits shall constitute a waiver by the Design-Builder of any right, equitable or otherwise, to bring any such Claim against HTA.

- (d) Content. The NOIC shall identify the Event upon which the NOIC is based, set forth the reasons the Design-Builder believes additional compensation and/or time is or will be due, the basis of the costs or delay involved, and insofar as possible, the estimated amount of the potential Claim.
- (e) Performance of the Work. If the Claim is for work that Design-Builder considers to be additional Work not yet commenced, the Design-Builder shall not delay performance of the Work, but if possible, submit the NOIC to HTA prior to the Design-Builder's start of performance of the alleged additional Work.
- (f) Waiver. The Design-Builder hereby expressly waives all rights to assert any and all claims based on any change in the work, delay, suspension, or acceleration for which the Design-Builder failed to provide proper and timely notice or failed to provide a timely request for a Change, as required by this Contract.

Section 14.02 Submittal and Review of Claims.

- (a) Submittal and Review. Subject to having filed a timely NOIC as set forth in Section 14.01, the Design-Builder shall file its Claim in writing within thirty (30) calendar days after the Design-Builder first becomes aware of a decision, action, order, or position of HTA to which it objects ("Event"), in sufficient detail for HTA to ascertain its basis and amount. The Design-Builder shall furnish, when requested by HTA, such further information and details as HTA may require to evaluate the Claim. The Design-Builder shall give HTA access to its records and other materials relating to the Claim, and shall cause its Subcontractors to do the same, so that HTA can fully investigate the Claim.
- (b) Delay Claims. The Design-Builder shall submit, with each Claim for a time extension for any cause, a proposed revision to the Critical Path Schedule incorporating the effects of the delay claimed. The Claim shall also contain reasonable proposals to minimize the delay and its effects. The Design-Builder shall also submit an Impacted Schedule showing the proposed revision. The Impacted Schedule shall contain all other pending Change Orders, delays, or Claims of delay that are not included in the Critical Path Schedule.
- (c) Cost and Pricing Data. The Design-Builder shall submit Cost and Pricing Data, in the form and with the content specified under Article X of this Contract or otherwise required by HTA, in connection with all Claims, unless such pricing is based on adequate price competition, established catalog prices, market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation.
- (d) Certificate of Current Cost and Pricing Data. In addition to the Cost and Pricing Data described in

subsection (c) above, each Claim over Fifty Thousand U.S. Dollars (\$50,000) shall be accompanied by the following certification:

“This is to certify that, the claim, to the best of my knowledge and belief, the costs or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or HTA's authorized representative in support of the claim amount are accurate, complete and current as of the date (claim submittal date)".

(e) Subcontractor Claims.

- (i) Prior to submission by Design-Builder of any Claim that is based in whole or in part on a request by a Subcontractor to the Design-Builder under its Subcontract (a "Subcontractor Claim"), the Design-Builder shall review the Subcontractor Claim and shall determine in good faith that each such Claim is justified hereunder, and that the Design-Builder is justified in requesting an increase in the Contract Price and/or Contract Time in the amounts specified in the Subcontractor Claim.
- (ii) Each Subcontractor Claim submitted to HTA shall include a summary of Design-Builder's analysis of all components of the such Claims and a certification in form acceptable to HTA, signed by Design-Builder, stating that Design-Builder has investigated the basis for such Claim and has made a good faith determination that such Claim is justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation and has no reason to believe and does not believe that the factual basis for the Subcontractor Claim is falsely represented. Any Subcontractor Claim that is not accompanied by such analysis and certification shall be considered incomplete.

Section 14.03 Response to Claims.

- (a) HTA Final Decision. Within forty-five (45) calendar days after the Design-Builder's submittal of a Claim, HTA will issue a written decision to the Design-Builder setting forth HTA's final decision on the Claim, unless additional time is needed to review additional records or documents needed by HTA for proper resolution of such Claim.
- (b) Further Proceedings. -- If the Design-Builder wishes to dispute HTA's final decision regarding a Claim, the Design-Builder must proceed in accordance with Article XV hereof.

Section 14.04 No Claim After Final Acceptance. The Design-Builder shall not be eligible to, and shall not make any Claims after HTA issues a Certificate of Final Acceptance. The Design-Builder's Request for Final Acceptance of the Work and HTA's issuance of a Certificate of Final Acceptance shall constitute a full accord and satisfaction with respect to all Claims, actual or potential, known or unknown, or disputed.

Section 14.05 Performance During Claim or Dispute. The Design-Builder shall proceed diligently with performance of the Contract and the Work, pending resolution of any Claim, Dispute, appeal, or action under this Article or Article XV hereof. During the pendency of such Claim or Dispute, HTA will continue to pay the Design-Builder for work that is not the subject of the Claim or Dispute, in accordance with Section 17.05 hereof.

ARTICLE XV. DISPUTE AND DISPUTE RESOLUTION

Section 15.01 Applicability of Dispute Process.

- (a) Applicability. The provisions of this Article shall apply to all disputes arising out of this Contract or the Work. All disputes shall be resolved strictly in accordance with this Article, the other Contract Documents, and applicable law.
- (b) Claims. If the dispute involves a Claim by the Design-Builder, the Design-Builder shall comply with and be subject to the provisions of Article XIV hereof.

Section 15.02 Dispute Resolution.

- (a) Informal Resolution. The Parties shall first attempt to resolve the dispute informally in discussions between HTA's Transit Planner and the appropriate Design-Builder Key Personnel. If these individuals are unable to resolve the dispute within fifteen (15) calendar days after it arises, the matter in dispute will be submitted to the Design-Builder's representative and HTA's General Manager for resolution. If the dispute remains unresolved fifteen (15) calendar days after that submittal, the Design-Builder may request that HTA's General Manager issue a recommended decision on the matter in dispute. HTA's General Manager shall issue the recommended decision in writing and provide a copy to the Design-Builder.
- (b) HTA Board Review. The recommended decision of HTA's General Manager shall become final unless, within fifteen (15) calendar days of receipt of such recommended decision, the Design-Builder submits a written request for review to the HTA Board of Directors. In connection with any such review, the Design-Builder's representative and HTA's General Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented.
- (c) Mediation/Arbitration. If a dispute remains unresolved after review by the HTA Board of Directors under subsection (b), the Parties agree that prior to initiating any litigation they will make a good faith effort to utilize mediation, arbitration, or other alternative dispute resolution procedures to resolve the dispute.
- (d) Judicial Review. If the Parties are unable to resolve a dispute informally or through a dispute resolution process under this Section, either Party may seek resolution of the matter in an appropriate court in the State of California.
- (e) Obligation to Proceed. In the event of a dispute, the Design-Builder shall proceed with the Work at the direction of HTA, and without prejudice to its position on the matters giving rise to the

dispute. During the pendency of the dispute, HTA will continue to pay the Design-Builder for Work that is not the subject of the dispute, in accordance with Article XVII.

ARTICLE XVI. TERMINATION AND OTHER REMEDIES

Section 16.01 Suspension.

- (a) Suspension for Convenience.
 - (i) Authority of HTA. HTA may, at any time and for any reason within its sole discretion, by written notice, order the Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that HTA deems appropriate for the convenience of HTA.
 - (ii) Compliance by Design-Builder. The Design-Builder shall immediately comply with any such written suspension order and take all reasonable steps to mitigate and minimize costs allocable to the Work covered by the suspension. The Design-Builder shall promptly recommence the Work upon receipt of written notice from HTA directing Design-Builder to resume work.
 - (iii) Treatment. Any suspension for convenience exceeding two (2) Business Days each, or multiple suspensions for convenience totaling more than six (6) Business Days, shall be considered an HTA-Caused Delay if a Critical Path is delayed. Adjustments to the Contract Price and/or Contract Time may be available for any such HTA-Caused Delay, subject to the Design-Builder's compliance with the requirements in Article X hereof, and provided that such suspension is determined to be an Excusable Delay or Compensable Delay thereunder.
- (b) Suspensions for Cause. HTA may, at any time, suspend the Work by written order, wholly or in part, for Design-Builder's failure to:
 - (i) Correct conditions unsafe for the Project personnel or the general public;
 - (ii) Comply with any Governmental Approval, Government Rule, or otherwise carry out the requirements of this Contract;
 - (iii) Carry out orders of HTA;
 - (iv) Comply with requirements for developing and implementing the Quality Management Plan, Safety Plan, or other plans required under the Contract Documents; or
 - (v) Comply with any Government Rule or Governmental Approval.
- (c) Compliance by Design-Builder. The Design-Builder shall immediately comply with any written suspension order under this Section. The Design-Builder shall promptly recommence the Work upon receipt of written notice from HTA directing Design-Builder to resume work. HTA shall

have no liability to Design-Builder in connection with any suspension for cause under this Section, nor shall the Design-Builder have any eligibility for a Change on the basis of a suspension for cause.

- (d) Responsibilities of the Design-Builder During Suspension Periods. During any period that Work is suspended, the Design-Builder shall continue to be responsible for the Work and shall prevent damage or injury to the Project, shall provide for drainage, shall erect necessary temporary structures, signs, or other facilities required to maintain the Project, and shall maintain traffic control plans, signing, striping and other operational improvements. During any suspension period, the Design-Builder shall maintain in a growing condition all newly established plantings, seedlings, and sod furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement during the suspension period. Additionally, the Design-Builder shall continue other Work that is not covered by the suspension.

Section 16.02 Termination for Convenience.

- (a) Authority of HTA. HTA may terminate the Contract and the performance of the Work by the Design-Builder in whole or, from time to time, in part, if HTA determines, in its sole discretion, that a termination is in HTA's best interest. Such termination will be effected by delivering to the Design-Builder a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience, specifying the extent of termination and its effective date. Termination (or partial termination) of this Contract shall not relieve any Surety of its obligation for any claims arising out of the Work performed.
- (b) Design-Builder's Responsibilities Upon Receipt of Notice of Termination. After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by HTA, the Design-Builder shall immediately proceed with the following obligations:
 - (i) Stop Work as specified in the notice.
 - (ii) Notify all affected Subcontractors that the Contract is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by HTA.
 - (iii) Place no further orders or Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
 - (iv) Terminate all Subcontracts to the extent they relate to the Work terminated, subject to assignments under Subsection (5) below.
 - (v) Assign to HTA in the manner, at the times, and to the extent directed by HTA, all of the right, title, and interest of the Design-Builder under the Subcontracts so terminated, in which case HTA will have the right, in its sole discretion, to Approve performance, settle or pay any

termination settlement proposal arising out of the termination of such Subcontract.

- (vi) Subject to the prior written approval of HTA, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts.
 - (vii) Provide HTA, no later than forty-five (45) calendar days from the effective date of termination, with an inventory list of all materials previously produced, purchased, or ordered from Suppliers for use in the Work and not yet used in the Work, including their storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to HTA, and such other information as HTA may request; and transfer title and deliver to HTA through bills of sale or other documents of title, as directed by HTA, the following: (A) all Work in process, completed Work, supplies, and other materials produced or acquired for the Work terminated; and (B) the Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to HTA if the Work had been completed.
 - (viii) Complete performance in accordance with the Contract Documents of all Work not terminated.
 - (ix) Take all action that may be necessary, or that HTA may direct, for the safety, protection and preservation of (A) the public, including public and private vehicular movement, (B) the Work; and (C) Equipment, machinery, Materials, and property related to the Project that is in the possession of the Design-Builder and in which HTA has or may acquire an interest.
 - (x) As authorized by HTA in writing, use best efforts to sell at reasonable prices any property of the types referred to in this Section; provided, however, that the Design-Builder (A) is not required to extend credit to any purchaser; and (B) may acquire the property under the conditions prescribed and at prices approved by HTA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by HTA under the Contract Documents or paid in any other manner directed by HTA.
 - (xi) If requested by HTA, withdraw from the portions of the Site designated by HTA and remove such Materials, Equipment, tools, and instruments used by, and any debris or waste materials generated by, the Design-Builder and any Subcontractor in the performance of the Work as HTA may direct.
 - (xii) Comply with all other requirements or directions of HTA as may be specified in the Notice.
- (c) No Waiver. Notwithstanding any other provision of this Contract, a Termination under this Section shall not waive any right or claim to damages which HTA may have or limit HTA's rights to pursue any cause of action which it may have by law, in equity, or under this Contract. Nor shall a Termination relieve the Design-Builder of its responsibilities for the completed Work or operate to release the Performance Bond or the Payment Bond.

Section 16.03 Settlement of Termination for Convenience.

(a) Settlement Proposal.

- (i) Timing of Submittal. Within forty-five (45) calendar days after receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, the Design-Builder shall submit a final termination settlement proposal to HTA in the form and with the certification prescribed by HTA. The Design-Builder's termination settlement proposal shall then be reviewed by HTA and acted upon, returned with comments, or rejected.
- (ii) Failure to Submit. If the Design-Builder fails to submit the proposal within the time allowed, HTA may determine, on the basis of information available, the amount, if any, due to the Design-Builder because of the termination and shall pay the Design-Builder the amount so determined.

(b) Amount of Negotiated Termination Settlement.

- (i) Agreement on Amount. The Design-Builder and HTA may agree, as provided in this Section, upon the whole or any part of the amount or amounts to be paid to the Design-Builder by reason of the total or partial termination of Work for convenience. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and Approved by HTA. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and the Contract Price of Work not terminated.
 - (ii) Actions upon Agreement. Upon determination of the settlement amount, the Contract will be amended accordingly, and the Design-Builder will be paid the agreed amount as described in this Section.
 - (iii) Reservation. HTA's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, or relieve the Design-Builder from its obligations with respect thereto, including Warranties.
- (c) No Agreement as to Amount of Termination Settlement. If the Design-Builder and HTA fail to agree upon the whole amount to be paid the Design-Builder by reason of the termination for convenience, the amount payable (exclusive of interest charges) shall be determined by HTA in accordance with the following provisions, but without duplication of any items or of any amounts agreed upon:
- (i) Payment for Work Performed. HTA will pay the Design-Builder the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

- 1) The Design-Builder's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by Article X hereof, for all Work performed, including mobilization, demobilization, settlements of subcontracts, and work done to secure the Project for termination and preserve project property, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to HTA's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Design- Builder, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. When the Contract is terminated as the result of a Force Majeure Event, deductions will also be made for the cost of materials damaged by that event. If HTA determines that the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.
 - 2) A sum, as profit on such reasonable out-of-pocket expenses described in subparagraph 16.03(c)(i)a above, determined by HTA to be fair and reasonable, but in no event to exceed four percent (4%) of the amount determined under that subparagraph; however, if it appears that the Design-Builder would have sustained a loss on the entire Contract had it been completed, HTA shall allow no profit under this subparagraph and shall reduce the settlement to reflect the indicated rate of loss.
- (ii) Exclusions and Adjustments. The Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the amounts payable under paragraph (i) above and that items such as lost or anticipated profits, unabsorbed overhead, and opportunity costs shall not be recoverable upon termination of the Contract. The total amount to be paid to the Design-Builder may not exceed the total Contract Price less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits, or other items which were previously passed through to HTA by the Design-Builder, such refund shall be paid directly to HTA or otherwise credited to HTA.
- (d) Reduction in Amount of Claim. The amount otherwise due the Design-Builder under this Section shall be reduced by (1) the amount of any claim which HTA may have against the Design-Builder or any Design-Builder-Related Entity in connection with the Contract; (2) the agreed price for, or the proceeds of sale, of property, materials, supplies or other things acquired by the Design-Builder or sold and not otherwise recovered by or credited to HTA; (3) all unliquidated advance or other payments made to or on behalf of the Design-Builder applicable to the terminated portion of the Work or Contract; (4) amounts that HTA deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens, and stop notices relating to the Project, including claims by Utility Owners; (5) the cost of repairing any nonconforming Work; and (6) any amounts due or payable by the Design-Builder to HTA.
- (e) No Consequential Damages. Under no circumstances shall the Design-Builder or any Subcontractor or supplier be entitled to anticipatory or unearned profits or consequential or other damages as a result of a Termination or Partial Termination for Convenience. The payment

to the Design-Builder determined in accordance with this Section constitutes the Design-Builder's, Subcontractors', and Suppliers' exclusive remedy for a termination hereunder.

- (f) Dispute Resolution. The failure of the parties to agree on amounts due under this Article shall be a dispute to be resolved in accordance with Article XV hereof.
- (g) Allowability of Costs. All costs claimed by the Design-Builder under this Article shall be allowable, allocable, and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.
- (h) Required Provisions in Subcontracts. Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section. Each Subcontract shall provide that, in the event of a termination for convenience by HTA, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment that constitutes consequential damages on account of the termination or partial termination.

Section 16.04 Termination For Default.

- (a) Events of Default. The Design-Builder shall be in default under the Contract upon the occurrence of any one or more of the following events or conditions ("Events of Default"):
 - (i) the Design-Builder fails promptly to begin the Work under the Contract Documents following issuance of the NTP, fails to resume on a timely basis the performance of Work which has been suspended or stopped, or fails to continuously and diligently prosecute the work in accordance with the Project Schedule;
 - (ii) the Design-Builder fails or refuses to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in design and construction of the Project; fails or refuses to promptly correct Deficiencies or to remove and replace rejected materials or nonconforming or unacceptable Work; or fails or refuses to provide required Goods in accordance with the Project Schedule;
 - (iii) the Design-Builder fails to comply with its other obligations under the Contract Documents, including failure to maintain the insurance and bonds required hereunder; failure to provide the indemnifications required hereunder; failure to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law; and failure to comply with any Government Rule or Governmental Approval;
 - (iv) the Designer Builder is debarred from bidding on or performing public works contracts;
 - (v) the Design-Builder initiates a bankruptcy or other insolvency proceeding or an involuntary case is commenced against the Design-Builder seeking liquidation, reorganization, or similar actions or relief; or

- (vi) the Design-Builder fails to timely remove or replace personnel as directed by HTA in accordance with its rights under this Contract.
- (b) Cure Notice; Actions by Design-Builder and Surety.
 - (i) Issuance of Cure Notice. If HTA determines the Design-Builder is in default of the Contract and that the default may be subject to a cure, HTA will issue a Cure Notice to the Design-Builder describing the default. If HTA determines that the Design-Builder is in default and the default cannot be cured, HTA may issue a Notice of Termination hereunder.
 - (ii) Failure of Design-Builder to Cure. If the Design-Builder fails to cure the default within thirty (30) calendar days after receipt of such Cure Notice, if the default cannot be cured within thirty (30) calendar days, or if the Design-Builder fails to commence to cure within thirty (30) Days or fails to diligently proceed to cure or to cure the default within the time HTA reasonably determines to be necessary, HTA shall provide notice to the Surety of the Design-Builder's failure to cure or commence a cure, accompanied by a copy of the Cure Notice in question. HTA may in its sole discretion demand that the Surety cure the default. Without regard to whether HTA demands that the Surety cure the default, HTA may take any other actions as it deems appropriate to cause the completion of the Work and to mitigate its damages. The Surety on the Performance Bond under the Contract shall not be entitled to take over the Design-Builder's performance of Work in case of Termination under this Article, except with the written consent of HTA.
 - (iii) Failure of the Surety to Cure. If HTA demands that the Surety cure the default, and the Surety fails to cure the default within thirty (30) calendar days after receipt of the Cure Notice, if the default cannot be cured within thirty (30) calendar days, or if the Surety fails to commence to cure within thirty (30) calendar days and diligently proceed to cure within the time HTA determines to be necessary, HTA may, by written notice of Termination for Default, terminate the Contract or such part of the Contract as HTA in its sole discretion deems to be in its best interest.
 - (iv) Timing for Actions. HTA may establish a shorter time period for the actions specified in this subsection if it determines, in its sole discretion, that such shorter period is necessary in the interest of public safety.
 - (v) Liability. Whether or not the Contract or any part thereof is terminated, the Design-Builder shall be liable for any damages to HTA resulting from the Design- Builder's default.
- (c) Design-Builder Obligations on Receipt of Notice. Upon receipt of a Notice of Termination for Default from HTA, the Design-Builder shall:
 - (i) Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (ii) Place no further orders or Subcontracts for Goods or Work except as may be necessary for

completion of such portions of the Work expressly excluded from the Notice of Termination;

- (iii) Communicate any Notice of Termination to the affected Subcontractors and suppliers at all tiers;
 - (iv) Terminate all orders and Subcontracts that relate to the performance of Work terminated by the Notice of Termination;
 - (v) At HTA's direction, transfer title to and deliver all designed Goods, equipment, documents, Work in progress, tools, dies, jigs, fixtures, plans, drawings, information, and other items that the Design-Builder has produced or acquired for the terminated portion of the Contract and would have been required as furnished to HTA if the Contract had been completed; and
 - (vi) Protect and preserve property in its possession in which HTA has an interest.
- (d) HTA Completion of Work. Upon HTA's termination of the Contract in whole or in part for default, HTA will have the right to complete the Work by whatever means and methods it deems advisable. In such circumstances, HTA:
- (i) may take over the Work and complete it by contract or otherwise;
 - (ii) will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in HTA's sole judgment, best accomplish such completion;
 - (iii) may take possession of and use any or all the Design-Builder's Goods, plant, tools, construction equipment, and property of any kind, provided by or on behalf of the Design-Builder for the purpose of completing the Work, or any portion thereof, and shall not be responsible to the Design-Builder for fair wear and tear. The Design-Builder shall have no rights in such property during its use by HTA;
 - (iv) may procure, upon such terms as HTA deems appropriate, all Goods and services necessary to complete the Work, and the Design-Builder shall be liable for any and all excess costs incurred by HTA in connection with such procurement;
 - (v) may charge to the Design-Builder the expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services, as certified by HTA, and may deduct such amounts from payments that are due or may become due to the Design-Builder; and
 - (vi) may charge all other excess costs to the Design-Builder and deduct these costs from payments otherwise due at that time or thereafter; provided that if any costs and/or expenses incurred by HTA are in excess of the amounts which otherwise would have been payable to the Design-Builder, then the Design-Builder shall promptly pay the amount of such excess to HTA upon notice of the excess so due.
- (e) No Damages or Anticipatory Profits. Neither the Design-Builder, nor any Design-Builder-Related

Entity, Subcontractor, Supplier, or Third Party shall be entitled to any damages of any kind, whether they are direct, indirect, special, anticipatory, consequential, or any other damages, nor be entitled to any anticipatory profits on Work not yet performed, as a result of any Termination for Default under this Section. Payment to the Design-Builder, if applicable in accordance with this Section, shall constitute the exclusive remedy for any termination hereunder.

- (f) Rights in Bankruptcy, Liquidation, or Similar Proceedings. The Design-Builder acknowledges that if a bankruptcy, liquidation, or similar proceeding occurs, such event could impair or frustrate the Design-Builder's performance of the Work. Accordingly, the Design-Builder agrees that upon the occurrence of any such event, HTA shall be entitled to request of the Design-Builder, its Guarantor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) calendar days of delivery of the request shall entitle HTA to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, HTA shall be entitled to proceed with the Work with its own forces or with other Design-Builders on a time and material or other appropriate basis, the cost of which will be credited against and deducted from HTA's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under this Contract and the Performance Bond.
- (g) Payments for Work Performed. In lieu of the provisions of this Section for terminating the Contract and completing the Work, HTA may pay the Design-Builder for the Work already done according to the provisions of the Contract Documents and may treat the Work remaining undone as if it had never been included or contemplated by this Contract. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by the Design-Builder.
- (h) Change to Termination for Convenience. In the event that the Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience.
- (i) Other Rights and Remedies. The exercise or beginning of the exercise by HTA of any one or more rights or remedies under this Section shall not preclude the simultaneous or later exercise by HTA of any or all other such rights or remedies, each of which shall be cumulative.
- (j) Damages. In the event HTA suffers damages as a result of the Design-Builder's breach or failure to perform an obligation under the Contract Documents, then, subject to the limitation on liability contained in this Contract, HTA shall be entitled to recovery of such damages from the Design-Builder regardless of whether that breach or failure is or becomes an Event of Default.
- (k) Relation to Liquidated Damages. The Design-Builder and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by the Design-Builder hereunder or by HTA's declaration of an Event of Default, or by actions taken by HTA under this Section.
- (l) False Statements. HTA's remedies associated with any false statement made by the Design-Builder shall include the right to cancel the Contract.

- (m) Force Majeure. The Design-Builder shall not be in breach or default of this Contract, or be liable for damages hereunder, if its failure to perform is due to a Force Majeure event.

Section 16.05 Cooperation in Event of Termination.

- (a) General Requirements.

- (i) Obligation to Cooperate. The Design-Builder understands and agrees that HTA has obligations that it cannot satisfy without use of the completed Work, and that a failure to satisfy its obligations under this Contract could result in irreparable damage to HTA and the person and entities it serves. Therefore, the Design-Builder agrees that in the event of any Termination of all or any part of this Contract for any reason, the Design-Builder shall fully cooperate with HTA in transition of the Work to HTA or to a new Design-Builder or provider of Goods and services, toward the end that there be no interruption of day-to-day operations due to the unavailability of the completed Work, or to related or existing facilities to the extent they are impacted by the Termination of this Contract, during such transition.
 - (ii) No Right to Withhold Work. The Design-Builder shall have no right to withhold or limit any of the Work or any transition services on the basis of any alleged breach of this Contract by HTA, other than a failure by HTA to timely pay the amounts due based upon a properly submitted and approved invoice for Work rendered during the transition period or the amounts due for such transition services under this Article. Notwithstanding the provisions of Article 14 regarding Disputes, HTA shall have the right to seek specific performance of this Article in any court of competent jurisdiction, and the Design-Builder hereby waives any defense that damages are an adequate remedy.

- (b) Termination Transition Plan.

- (i) Development of Plan. Upon the written direction from HTA included in the Notice of Termination, the Design-Builder shall develop a Termination Transition Plan, and shall submit such Plan to HTA within ten (10) calendar days after such Notice. The Termination Transition Plan shall be subject to HTA's Approval. If the Design-Builder has not submitted, or HTA has not Approved, a Termination Transition Plan by the effective date of the Termination of this Contract, HTA may direct the Design-Builder to continue to perform Work in accordance with Contract requirements to the extent required by HTA. This Section shall survive the Termination of the Contract.
 - (ii) Design-Builder Responsibilities. Upon Termination under this Article, the Design-Builder shall:
 - 1) meet with HTA's authorized representative as soon as practicable after a Notice of Termination has been given, to discuss the Termination Transition Plan or any potential modifications to then most current Termination Transition Plan;

- 2) use its best efforts to assist HTA in effecting a transition of the Work, in accordance with industry best practices, to HTA or another Design- Builder chosen by HTA; and
 - 3) continue to provide Work as well as transition services for a period defined in the Termination Transition Plan.
- (iii) Transition Services. In addition to the Work required of the Design- Builder as set forth in this Contract, the transition services shall include, at a minimum, maintaining current data and records, providing services until transition to HTA or to a new Design-Builder, providing on-Site assistance, cooperating with HTA or its designated Design-Builder, and providing such other services as shall be necessary or appropriate to facilitate, without interruption to the Work, the orderly transition of Work to HTA or its new Design-Builder in accordance with industry best practices. If the Design-Builder is providing any Work hereunder at the time of such transition utilizing any property or services of a Subcontractor or Supplier, the Design-Builder shall, at the request of the Contracting Officer, assign such Subcontract to HTA.

ARTICLE XVII. INVOICING AND PAYMENT

Section 17.01 Contract Price.

- (a) Elements of Contract Price. The Contract Price for full compensation for the Work and other obligations of the Design-Builder under the Contract Documents is set forth in the Agreement.
- (b) Items Included in Price. The Design-Builder acknowledges and agrees that, subject only to Design-Builder's rights under Article X hereof, the Contract Price includes (1) all Designs, Equipment, Materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to Design-Builder's performance of its obligations under the Contract Documents (including all Work, Equipment, Materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (2) all costs of obtaining all Governmental Approvals other than Governmental Approvals which are the responsibility of HTA; (3) all costs of compliance with Government Rules, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of HTA, Utility Owners, or other third parties; (4) payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work, and any Equipment, Materials, labor, or services included therein; (5) payment of all salaries, wages, benefits, and expenses of the Design-Builder's employees; (6) all payments to Subcontractors and Suppliers; (7) compensation for all risks, liabilities, and contingencies assigned to the Design-Builder under the Contract Documents; and (8) all other costs not expressly stated herein that are needed or incurred by Design Builder to complete Design Builder's obligations under the Contract Documents.

Section 17.02 General Invoicing Instructions. The Design-Builder's Invoice shall be submitted in a format provided or Approved by HTA, and shall include, at a minimum, the following:

- (a) Reference to HTA Project Number to which the Invoice applies.
- (b) The Design-Builder's Invoice Number, Invoice Date, as well as the contract payment number the

invoice represents.

- (c) The itemized and total amount being invoiced (in U.S. Dollars), less the amount of all contractual retention and deductions applicable for the invoiced amount (in U.S. Dollars), and the resulting total net payment due.
- (d) The time period during which the Work was performed and for which the invoice is submitted.
- (e) A statement that the Project can be completed on schedule and within the Contract Price, subject only to outstanding notices or changes.
- (f) Reference to the Design-Builder's Taxpayer ID Number.
- (g) If the invoice is for a Progress Payment, the Progress Payment information required under Section 17.03.

Section 17.03 Progress Payments.

- (a) Basis for Payment. Payment to the Design-Builder for the Work will be made by HTA on the basis of Progress Payments relating to the completion of specific elements of the Work, in accordance with the Schedule of Values and Work Breakdown Structure (WBS) (if applicable) agreed upon by HTA and the Design-Builder and incorporated into the Critical Path Schedule.

Section 17.04 Applications for Progress Payment.

- (a) Timing of Applications. At least 20 days before the date established in the Agreement for a Progress Payment, but not more often than once a month, Design-Builder shall submit to HTA's Project Manager for review an Application for Progress Payment filled out and signed by Design-Builder covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
- (b) If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (i) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Design-Builder for the materials and equipment; (ii) at HTA's request, documentation warranting that HTA has received the materials and equipment free and clear of all liens; and (iii) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect HTA's interest therein, all of which must be satisfactory to HTA.
- (c) Beginning with the second Application for Payment, each Application must include an affidavit of Design-Builder stating that all previous progress payments received by Design Builder have been applied to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.

- (d) The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Pursuant to California Public Contract Code § 22300, Design-Builder may substitute securities for any moneys withheld by HTA under the Contract Documents. At the request and expense of the Design-Builder, securities equivalent to the amount to be withheld shall be deposited with HTA, or with a state or federally chartered bank in California as the escrow agent, who shall then pay those moneys to the Design-Builder. Upon satisfactory completion of the Contract, the securities shall be returned to the Design-Builder.
- (e) Contents of Application. The Design-Builder's Application for Progress Payment (hereinafter "Application") shall contain:
 - (i) One (1) original hard copy of the Design-Builder's Invoice, submitted in accordance with the provisions set forth in herein;
 - (ii) A description of the Work completed;
 - (iii) Conditional and unconditional waivers executed by the Subcontractors as described in Section 17.10(d) below;
 - (iv) Release of Stop Notice from Subcontractors;
 - (v) Certified payroll records for the Work performed (also to be delivered by the Design-Builder directly to the California Department of Industrial Relations in accordance with the applicable provisions of the California Labor Code);
 - (vi) An updated Critical Path Schedule;
 - (vii) The Design-Builder's written certification that the Work has been performed in accordance with the Contract Documents;
 - (viii) Signature of HTA's authorized representative acknowledging that the Work described in the Application has been done in accordance with the Contract Documents; and
 - (ix) Any additional information or submittals required by the Contract Documents or otherwise required by HTA to process the Progress Payment.
- (f) Conditions on Submittal. HTA may, in its discretion, require a Progress Payment meeting with the Design-Builder prior to the submittal of an Application under this Section.
- (g) Delivery. The Design-Builder's Applications for Progress Payment (i.e., Invoices) shall be submitted electronically in draft to HTA's [Project Manager] for review and then electronically in final version to the finance representative designated by HTA.

Section 17.05 Terms of Payment.

- (a) Timing of Payment. HTA will make Progress Payments within sixty (60) calendar days after

receipt of an undisputed and properly submitted Application. Upon receipt of an Application, HTA shall:

- (i) Review the Application to determine if it is complete and meets contractual requirements;
 - (ii) Return any Application that is not complete or does not meet contractual requirements as soon as practicable, but not later than ten (10) calendar days after receipt by HTA, with a statement of the reason(s) why the Application does not meet contractual requirements.
- (b) Basic Requirements. Applications may be submitted no more frequently than once per calendar month, and no later than fifteen (15) calendar days after the last day of the calendar month. No Progress Payments will be made for Work not performed in accordance with the Contract Documents. In addition, HTA reserves the right to withhold payments for any Work that is the subject of a Dispute, that is found Deficient, or that is not supported by appropriate documentation, or for any element of the Application for Progress Payments that is not complete or does not meet contractual requirements. If HTA withholds payments as provided herein, HTA will make payment of any undisputed amount covered by the Application.
- (c) Limitations on Payment. In no event shall HTA have any obligation to pay any amount which would result in (1) payment for any activity in excess of the value of the activity times the completion percentage of such activity; or (2) aggregate payments hereunder in excess of the overall completion percentage for the Project times the Contract Price.

Section 17.06 Payment For Goods Not Incorporated Into The Work. HTA may, in its sole discretion, authorize payment for Goods not yet incorporated into the Work, subject to the following conditions:

- (a) Goods shall be delivered to the Site or delivered to the Design-Builder and promptly placed in appropriate storage within a location approved by HTA.
- (b) Prior to inclusion of such Goods in any Application, the Design-Builder shall submit certified invoices for such Goods to HTA. HTA may allow only such portion of the amount represented by these invoices that, in its opinion, does not exceed the reasonable quantities and cost of such Goods.
- (c) If Goods are stored outside Humboldt County, the Design-Builder shall pay all personal and property taxes that are levied against HTA by any state or subdivision thereof on account of the storage of such Goods. HTA will permit the Design-Builder to contest, at its own expense, the validity of any such tax levied against HTA in appropriate legal proceedings.
- (d) Payments made for Goods included in an Application that are subsequently lost, damaged, or unsatisfactory shall be deducted from succeeding Applications.
- (e) HTA will not make any payments for Non-Conforming Goods.

Section 17.07 Title. Title to those portions of the Work for which Progress Payments or other payments are made shall pass to HTA upon payment.

Section 17.08 Retention On Progress Payments.

- (a) Retention Amount. HTA shall retain from each Progress Payment five percent (5%) of the Progress Payment as part of the security for the fulfillment of the Contract and completion of the Work by the Design-Builder. After fifty percent (50%) of the Work has been completed, if in the sole discretion of HTA progress on the Work is satisfactory, HTA may elect not to make any further deductions for retention, or to make deductions of less than five percent (5%). However, if HTA subsequently determines that the Work or progress of the Work is not satisfactory, HTA may reinstate, continue, or increase retention in amounts necessary to increase the total retention to an amount not to exceed five percent (5%) of the Contract Price.
- (b) Release of Retention. HTA shall release the Retention to the Design-Builder sixty (60) calendar days following Final Acceptance of the Work or thirty (30) calendar days following receipt of the Application for Final Payment from the Design-Builder, whichever is later, subject to any deductions from payments allowed under this Contract. In addition, HTA shall make prompt and regular incremental inspections and reviews of the Design-Builder's work at various stages of the Project, and if the progress of the Work is determined to be satisfactory, HTA may, in its sole discretion, elect to return a portion of the retention to the Design-Builder.

Section 17.09 Additional Deductions and Withholding.

- (a) General. In addition to the Retention described above, HTA may deduct from each Progress Payment any or all of the following:
 - (i) Liquidated Damages that have accrued as of the date of the Application for Progress Payment;
 - (ii) Deductions from previous Progress Payments already paid, due to HTA's discovery of Deficiencies in the Work;
 - (iii) Sums expended by HTA in performing any of the Design-Builder's obligations under the Contract that the Design-Builder has failed to perform; and
 - (iv) Other sums that HTA is entitled to recover from the Design-Builder under the terms of this Contract.
- (b) No Waiver. Failure of HTA to deduct any of the above-identified sums from a Progress Payment shall not constitute a waiver of HTA's right to such sums or to deduct them from a subsequent Progress Payment.

Section 17.10 Payment To Subcontractors.

- (a) Prompt Payment for Work. Pursuant to 49 CFR Part 26 and applicable State law, the Design-Builder shall pay each Subcontractor under this Contract for satisfactory performance of its

Work no later than ten (10) calendar days after receipt of each Progress Payment received from HTA that covers such Work.

- (b) Prompt Payment of Retention. Any retention withheld from any Subcontractor by the Design-Builder, or by a Subcontractor from any lower tier Subcontractor, shall not exceed the percentages specified in Section 17.08. The Design-Builder shall, within ten (10) calendar days after HTA has made released all or any portion of the retention amounts to the Design-Builder, promptly pay all retention owed to the Subcontractor(s) who has satisfactorily completed all of its Work and whose Work is covered by that retention.
- (c) Determination of Satisfactory Completion. For purposes of subsections (a) and (b) above, a Subcontractor's Work is "satisfactorily completed" when the Design-Builder certifies to HTA that all the tasks called for in the Subcontract have been satisfactorily accomplished. The Design-Builder may delay or postpone prompt payment or release of retention to a Subcontractor beyond the ten (10) Day time limit only if the Design Builder determines, and demonstrates to the satisfaction of HTA, that good cause exists for such delay or postponement.
- (d) Waiver and Release Forms.
 - (i) Required Documentation. As a condition to HTA's release of any Progress Payment, the Design-Builder shall furnish to HTA the following: (A) A duly executed "Conditional Waiver and Release" form from each Subcontractor listed in the current Application, and (B) A duly executed "Unconditional Waiver and Release" form from each Subcontractor listed in the preceding Application.
 - (ii) Contents of Waiver. The unconditional waiver(s) must state the amount that the Subcontractor has been paid with respect to the Progress Payment most recently made to the Design-Builder. The required waiver and release forms shall state that they are not intended to release claims beyond the amount of the Progress Payment made and do not cover unprocessed or unresolved claims. In the event the Design-Builder fails to supply any of the foregoing waiver and release forms, HTA may retain the amount attributable to any such Subcontractor until the appropriate form is received.

Section 17.11 Payment of Taxes.

The Contract Price includes compensation for all taxes, duties, permits and other fees and/or royalties imposed with respect to the Work, and any Equipment, Materials, labor or services included therein, except as expressly provided otherwise in the Contract Documents. The Design-Builder shall pay all Federal, State, and local taxes, and duties applicable to and assessable against any Work when due, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Design-Builder shall maintain auditable records, subject to HTA's review, confirming that tax payments are current at all times.

Section 17.12 Application for Final Payment.

- (a) Contents of Application for Final Payment. The Design-Builder shall prepare and submit an

Application for Final Payment to HTA that shall include the following:

- (i) The proposed total amount due the Design-Builder, segregated by items on the Schedule of Values, Contract Amendments, Change Orders, and other basis for payment;
 - (ii) Deductions for prior Progress Payments;
 - (iii) Amounts retained;
 - (iv) An unconditional waiver and release of all liens and stop notices for each Subcontractor;
 - (v) An unconditional waiver and release from the Design-Builder, including a waiver and release of all Claims;
 - (vi) Written evidence of final inspection and acceptance by each Third Party and Utility Owner of work performed by Design-Builder on facilities of Third Party and Utility Owner arising out of performance of the Work; and
 - (vii) Written acknowledgement from each Third Party and Utility Owner that it has received As-built Drawings in a form acceptable to it describing the work performed by the Design-Builder on the Third Party's and Utility Owner's facilities.
 - (viii) Evidence that any required Warranty Bond has been provided to HTA.
- (b) Waivers. The Application for Final Payment shall include complete and legally effective unconditional waivers and releases of all liens and stop notices satisfactory to HTA, arising out of or filed in connection with the Work. Prior Progress Payments shall be subject to correction in HTA's review of the Application for Final Payment.
- (c) Review by HTA. Within thirty (30) calendar days after receipt of the Design-Builder's Application for Final Payment, HTA will review the Application and forward changes or corrections to the Design-Builder. Prior Progress Payments will be subject to corrections in HTA's review of such Application. Within ten (10) calendar days after receipt of recommended changes from HTA, the Design-Builder will make the changes, and shall submit the revised Application for Final Payment. Upon Approval by HTA, the revised Application for Final Payment will become the approved Application for Final Payment.

Section 17.13 Final Payment.

- (a) Contents. The Design-Builder's Application for Final Payment (i.e., Final Invoice) shall be marked FINAL and submitted to HTA in accordance with this Article.
- (b) Payment. After Final Acceptance of the Work, Final Payment will be made as follows:
- (i) Conditions on Payment. If no Claims have been filed with the initial or any revised Application for Final Payment, and no Claims remain unsettled within thirty (30) calendar days after Final

Acceptance of the Work by HTA and agreements are reached on all issues regarding the Application for Final Payment, HTA, in exchange for an executed release satisfactory in form and substance to HTA, will pay the entire sum found due on the approved Application for Final Payment including the amount, if any, allowed on settled Claims.

- (ii) Scope of Release. The release from the Design-Builder shall be from any and all Claims arising under the Contract.
- (iii) Design-Builder's Certification. The release shall be accompanied by a certification by the Design-Builder that (A) it has resolved all Subcontractor, Supplier, and other Claims that are related to the settled Claims included in the Final Payment; (B) it has no reason to believe that any party has a valid Claim against the Design-Builder or HTA which has not been communicated in writing by the Design-Builder to HTA as of the date of the certificate; (C) all Warranties are in full force and effect; and (D) the waivers and releases and the Warranties shall survive Final Payment.
- (c) No Estoppel. The making of any payment or Final Payment by HTA shall not preclude or act as an estoppel from HTA (1) showing the true and correct amount and character of the Work done or Goods furnished by the Design-Builder; (2) showing that the Work and the Goods furnished do not, in fact, comply with the Contract Documents; or (3) demanding and recovering from the Design-Builder such damages as it may sustain by reason of the Design-Builder's failure to comply with the Contract Documents.

ARTICLE XVIII. MISCELLANEOUS PROVISIONS

Section 18.01 Value Engineering Change Proposals.

- (a) Submittal by Design-Builder. The Design-Builder is encouraged to submit Value Engineering Change Proposals (VECPs) for the purpose of enabling the Design-Builder and HTA to take advantage of potential cost and/or time savings through changes in the requirements of the Contract Documents that do not adversely impact essential characteristics of the Project. The Design-Builder is encouraged to submit VECPs whenever it identifies potential savings or improvements.
- (b) Purpose and Scope.
 - (i) Purpose. The purpose of VECPs is to encourage the use of the Design-Builder's ingenuity and experience in arriving at alternative designs, methods, and procedures that result in a lower direct cost to accomplish a prescribed function with the intention of HTA sharing in the resulting savings.
 - (ii) Scope and Objective. A VECP ideally shall produce direct cost savings to HTA and the public without, in the sole judgment of HTA, impairing essential functions and characteristics of the Project including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, and safety. When developing a VECP, the Design-Builder should address the environmental permit requirements, regulations, commitments made to the public to mitigate the impact of construction, and similar concerns. VECPs are limited to changes that

are within the design parameters, as defined by HTA, for the Project. VECPs may be developed by the Design-Builder or may be based on proposals from HTA or information contained in a Proposal submitted by another Design-Builder in response to the RFP.

(c) Value Engineering and Proposal Concepts Evaluation Meetings.

- (i) Initial Meetings. HTA's Project Manager will consult with the Design-Builder and arrange and lead meetings within thirty (30) calendar days after the issuance of the NTP, to review any initial VECPs submitted by the Design-Builder and review any concepts or ideas raised by HTA.
- (ii) Additional Meetings. Other value engineering meetings may be called by the Design-Builder or HTA, as necessary, to discuss and evaluate VECP opportunities identified by either HTA or the Design-Builder that may arise from time to time during the performance of the Contract. Attendance at the meetings and the preparation of the estimate of effects of a VECP shall be at no increase in the Contract Price.

(d) Description of VECPs. A VECP is a proposal developed and documented by the Design-Builder which would:

- (i) Modify or require a change in any of the requirements of, or constraints set forth in the Contract Documents in order to be implemented; and
- (ii) Reduce the Contract Price or schedule without impairing essential functions or characteristics of the Work, including the meeting of requirements contained in all Government Rules, and without being based solely upon a change in quantities.

(e) Information to be Provided. At a minimum, the Design-Builder shall submit the following information with each VECP:

- (i) Description of the existing Contract Document requirement(s) which are involved in the proposed change;
- (ii) Description of the proposed change;
- (iii) Discussion of differences between existing requirement(s) and the proposed change, together with advantages and disadvantages of each changed item;
- (iv) Itemization of the Contract Document requirements which must be changed if the VECP is approved (e.g., drawing numbers and specifications);
- (v) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents;
- (vi) Date or time by which a Change Order must be issued by HTA adopting the VECP in order to obtain the maximum cost reduction, noting any effect on the Critical Path Schedule;

- (vii) Costs of development and implementation by the Design-Builder;
 - (viii) Cost and/or time estimate for existing Contract Document requirements, compared to the Design-Builder's cost and/or time estimate with the proposed changes, including a definitive identification of the net cost and time savings associated with the proposed VECP;
 - (ix) A description of the technical aspects of the conceptual VECP in sufficient detail as to enable reviewers to determine the suitability of the VECP from an engineering perspective. If the technology is new, test information must be provided to HTA's satisfaction; and
 - (x) Any other relevant information HTA believes appropriate for the review of the VECP.
- (f) HTA Review. Upon receipt of a VECP from the Design-Builder, HTA will review and process the VECP expeditiously, but shall not be liable for any delay in acting upon any proposal submitted. The Design-Builder may withdraw all, or part, of any VECP at any time prior to Approval by HTA. In all situations, each party shall bear its own costs in connection with preparation and review of VECPs.
- (g) Approval of VECPs. HTA may, in its sole discretion, Approve (in whole or in part) any VECP submitted by issuance of a Change Order. Designs for Approved VECPs shall be prepared by the Design-Builder for incorporation into the Contract Documents. Until a Change Order is issued on a VECP, the Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of HTA to reject or Approve a VECP shall be final and not subject to the Dispute resolution provisions of Article XV.
- (h) Determination of VECP Amount.
- (i) Reduction in Contract Price. If HTA Approves a VECP submitted by the Design-Builder that results in cost savings, the Contract Price shall be reduced by an amount equal to fifty percent (50%) of the Estimated Net Savings, as defined in subparagraph 2) below.
 - (ii) Definition. The term "Estimated Net Savings" as used herein means (A) the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change, less (B) any additional costs incurred by HTA resulting from the VECP. The Design-Builder's profit shall not be considered part of the cost. The Design-Builder's share will be considered full compensation to the Design-Builder for implementing all changes pursuant to the Change Order that results from the VECP.
 - (iii) Limitation. Except as specified herein, the Design-Builder is not entitled to share in either collateral or future Contract savings. The term "collateral Contract savings" means those measurable net reductions in HTA's costs resulting from the VECP, including maintenance costs and the cost of HTA furnished equipment. The term "future Contract savings" means reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VECP submitted by the Design-Builder.

- (iv) When Payable. The Design-Builder's share of any VECP cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VECP had the VECP not been implemented.
- (i) Additional Conditions. The following conditions also apply to VECPs:
 - (i) HTA will be the sole judge as to whether a VECP qualifies for consideration and evaluation. HTA may reject any VECP which is not consistent with HTA's policies and goals for the Project.
 - (ii) A VECP must provide the same service life or more, facilitate economy of operations and ease of maintenance, and achieve the desired appearance and safety.
 - (iii) Elimination of Work does not necessarily constitute a VECP.
 - (iv) The Design-Builder shall not order any Materials related to the VECP until written notice of Approval has been received from HTA.
 - (v) The Design Builder shall update the Critical Path Schedule to reflect any schedule impact of the implementation of the VECP.

Section 18.02 Proprietary Bid Documents.

- (a) Submittal Required. As a condition of Contract award and as a condition precedent to receiving a NTP, Design-Builder shall submit to HTA, at Design-Builder's sole expense, one (1) complete set of all information and data used in preparation of Design-Builder's Price Proposal, including the same information from all Major Subcontractors named in its Proposal. Such information shall be submitted no later than fourteen (14) calendar days after the date on which the HTA Board approves the recommended selection of the HTA Evaluation Committee. For purposes herein, "Proprietary Bid Documents" is defined as all documentary information and data generated in Design-Builder's preparation of its Price Proposal and consisting of but not limited to the following:
 - 1) All quantity takeoffs;
 - 2) Calculations or rates of production and progress;
 - 3) Copies of quotes from Subcontractors and Suppliers;
 - 4) Memoranda, narratives, and Subcontractor scope letters;
 - 5) All add/deduct sheets;

- 6) Copies, on CD or DVD (readable by Windows Explorer) of all computer diskettes or computer data files containing electronic schedules, cut/add sheets, material takeoff sheets, bid estimate sheets, bid proposals, recap sheets, vendor quotations, as-planned schedules, preliminary schedules, Subcontractor scope letters, and computer printouts of the electronic schedule;
- 7) All other information used by the Design-Builder to arrive at the prices contained in its Proposal; and
- 8) Designer-Builder's certification to state the following:

"I certify under penalty of perjury and pursuant to the laws of the State of California that all the Proprietary Bid Documents submitted in accordance with the instructions contained in the Instructions to Bidders constitute all the information used in the preparation of the Bid and I further certify I have personally examined the contents of the Proprietary Bid Documents and found that the documents herewith submitted are complete that no other Bid preparation information exists."

(b) Submittal Format and Method.

- (i) Design-Builder shall submit Proprietary Bid Documents in its usual cost-estimating format, using the English language, with all dimensions and measurements in the English Imperial (lb./foot/sec.) system, and with all costs identified.
- (ii) Design-Builder shall submit Proprietary Bid Documents in sealed containers, clearly labeled on the outside as "Proprietary Bid Documents" and clearly marked on the outside with (A) Design-Builder's full legal name; (B) date of submittal; and (C) the HTA Project name and number.
- (iii) No other Proposal presentation information will be considered in resolving any Changes or Claims.
- (iv) Nothing in the Proprietary Bid Documents shall change or modify the terms or conditions of the Contract. Further, the Proprietary Bid Documents are not part of the Contract Documents.
- (v) If needed, Proprietary Bid Documents will be used by HTA and Design-Builder to assist in the negotiation of Claims, and in the settlement of Claims, Disputes, and other contractual matters. They will not be used for evaluation or Approval of the Design-Builder's anticipated methods of construction or, except for Claims and Disputes, for other matters related to the implementation of the Work.

(c) Access and Examination.

- (i) HTA will hold Proprietary Bid Documents in escrow for the duration of the Contract. Notwithstanding HTA's possession thereof, Proprietary Bid Documents are, and shall remain, the property of the Design-Builder. Proprietary Bid Documents will be returned to the Design-Builder at such time when HTA determines the Contract has been completed, has issued a

Certificate of Final Acceptance, and has recorded a Notice of Completion (if required).

- (ii) Access to the Proprietary Bid Documents shall be limited to HTA, the Design-Builder, any local, state, or Federal law enforcement or regulatory agency requesting access to these documents, and any agent or consultant of any of the foregoing entities.
 - (iii) Proprietary Bid Documents may be examined at any time deemed necessary after award of the Contract by (A) HTA and/or the Design-Builder, to assist in settlement of any Claims, Dispute resolution processes, or other contractual matters; or (B) any local, state, or Federal law enforcement or regulatory agency, to assist in any agency investigation.
- (d) Conditions on Examination.
- (i) HTA and the Design-Builder shall each designate in writing to the other a minimum of three (3) Business Days prior to examination the names of those representative(s) authorized to examine Propriety Bid Documents.
 - (ii) Only such duly designated authorized representatives of either HTA and the Design-Builder, or both (or by authorized representatives of a law enforcement or regulatory agency) will be permitted access to the Proprietary Bid Documents.
 - (iii) HTA will not reproduce any Propriety Bid Documents without the mutual agreement of the Design-Builder.
- (e) Confidentiality of Proprietary Bid Documents. HTA and the Design-Builder acknowledge that the Proprietary Bid Documents include trade secrets or other confidential information. HTA agrees to safeguard such information to the fullest extent authorized or permitted by applicable law, and further agrees to notify the Design-Builder of any request by a third party for the disclosure of such information.

Section 18.03 Records and Audits.

- (a) Maintenance. The Design-Builder shall maintain at a location Approved by HTA, a complete set of all books, documents, papers, data, documentation, and records, regardless of form ("Records") prepared or employed by the Design-Builder, its Subcontractors and Suppliers, and any Design-Builder-Related Entity in the management, scheduling, cost accounting, and other activities in connection with the Project. All such Records shall be retained and made available until five (5) years after the Final Acceptance Date or the termination of this Contract, whichever is applicable. Notwithstanding the foregoing, in the event of litigation or Claims arising from the performance of the Contract, all Records shall be retained and made available until such litigation, or other actions, and claims have been finally resolved.
- (b) Cost and Pricing Data. The Design-Builder, its Subcontractors and Suppliers, and any Design-Builder-Related Entity are required to submit cost and pricing data in connection with Change Orders and Claims, unless such pricing is based on adequate price competition, established catalog prices, market prices of commercial items sold in substantial quantities to the public, or

prices set by law or regulation. In any such submittal, the Design-Builder shall certify in substantially the form prescribed in FAR Subpart 15.406-2 that to the best of its knowledge and belief, the data submitted is accurate, complete, and current as of the date of agreement of the negotiated price of the Change Order or Claim. All such cost and pricing data shall be retained in accordance with subsection (a) hereof.

- (c) Access. The Design-Builder shall, in accordance with 49 CFR 18.36 (i) and , grant to HTA or its third party auditors, FTA, US Department of Transportation, and the Comptroller General of the United States (“Auditors”), audit rights and access to and the right to copy all Records (including all tax returns and supporting documentation filed with any government entity) of the Design-Builder, its Subcontractors and Suppliers, and any Design-Builder-Related Entity, as the auditors may request from time to time in connection with the issuance of Change Orders, the execution of Contract Amendments, the resolution of disputes, the resolution of Claims, and such other matters as the auditors deem necessary for purposes of complying or verifying compliance with the Contract Documents and Government Rules. Such audit and access rights include the following:
- (i) With respect to all Change Orders, Contract Amendments, Claims, and Disputes, the Design-Builder, its Subcontractors and Suppliers, and any Design-Builder-Related Entity, and cost proposals shall be subject to audit at any time. The Auditors have the right to examine all books, records, documents and other data of the Design-Builder related to the negotiation of, or performance of Work under, such Change Orders or Claims, for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted.
 - (ii) The Auditors may make audits, examinations, excerpts, and transcriptions, and may reproduce Records by any means whatsoever.
 - (iii) The Design-Builder, its Subcontractors and Suppliers, and any Design-Builder-Related Entity, or their agents shall provide adequate facilities, acceptable to the Auditors, for the audit during normal business hours, and shall cooperate fully with the auditors.
 - (iv) Failure of the Design-Builder, Subcontractors and Suppliers, and any Design-Builder-Related Entity, or their agents to maintain and retain sufficient records to allow the Auditors to verify all or a portion of the claim or to permit the auditor access to the Records of the Design-Builder, Subcontractors, Suppliers, any Design-Builder- Related Entity, or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.
- (d) Applicable Principles. Audits pursuant to this Section will be performed using FAR Part 31 et. seq., and GAAP (generally accepted accounting practices and principles) to determine the allowability, allocability, and reasonableness of the costs. In addition:
- (i) The Design-Builder, its Subcontractors and Suppliers, and any Design-Builder-Related Entity is each responsible for accounting for unallowable costs in accordance with FAR Subpart 31.201-6. All costs that are expressly unallowable or mutually agreed to be unallowable, including directly associated costs, shall be excluded from any billing, claim, or proposal applicable to this Contract.

- (ii) The Design-Builder shall maintain and segregate cost and pricing data, Records, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred and/or anticipated to be incurred, by Change Order or Claim.
- (e) Time and Materials. Where the payment method for any Work is on a time and materials basis, the audit and examination rights shall include all Records and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the Design-Builder has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.
- (f) Required Documents. At a minimum, the Auditors shall have access to the following documents as deemed necessary:
 - (i) Daily time sheets and supervisor's daily reports;
 - (ii) Union agreements and/or Project Labor Agreements;
 - (iii) Insurance, welfare, and benefits records;
 - (iv) Payroll registers;
 - (v) Earnings records;
 - (vi) Payroll tax forms;
 - (vii) Material invoices and requisitions;
 - (viii) Material cost distribution work sheet;
 - (ix) Equipment records (list of company equipment, rates, etc.);
 - (x) Subcontractors' (including Suppliers) invoices;
 - (xi) Subcontractors' and agents' payment certificates;
 - (xii) Cancelled checks;
 - (xiii) Job cost report;
 - (xiv) Job payroll ledger;
 - (xv) General ledger;

- (xvi) Cash disbursements journal;
 - (xvii) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim;
 - (xviii) Work sheets used to prepare the claim establishing the cost components for items of the claim including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
 - (xix) Emails;
 - (xx) Network servers, data storage devices, backup tapes/media; and
 - (xxi) Letters and correspondence.
- (g) Flow Down. The Design Builder shall include the requirements of this Section in each Subcontract.

Section 18.04 Public Records Requirements.

- (a) Ownership. Except as otherwise specifically provided in this Contract, all records, documents, drawings, plans, specifications, and all other information relating to the performance of the Work, including all documents and materials submitted by the Design-Builder or Design-Builder-Related Entities, shall become the exclusive property of HTA and shall be deemed public records.
- (b) Applicability of Public Records Act. The Design-Builder acknowledges and agrees that all records, documents, drawings, plans, specifications, and other materials in HTA's possession, including documents and materials submitted by the Design-Builder, are subject to the provisions of California Public Records Act. The Design-Builder shall be solely responsible for all determinations made by it under such law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. The Design-Builder is advised to contact legal counsel concerning such law and its application to the Design-Builder. HTA will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- (c) Confidential Materials. If any of the documents and materials submitted by the Design-Builder to HTA are clearly and prominently labeled "Trade Secret" or "Confidential" by the Design-Builder, HTA will endeavor to advise the Design-Builder of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will HTA be responsible or liable to the Design-Builder or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake, or negligence on the part of HTA.
- (d) Litigation. In the event of litigation concerning the disclosure of any documents or materials

submitted by the Design-Builder to HTA, HTA's sole involvement will be as a stakeholder retaining the documents or materials until otherwise ordered by a court and the Design-Builder shall be fully responsible for otherwise prosecuting or defending any action concerning the documents and materials at its sole cost and risk.

Section 18.05 Design-Builder Reports.

- (a) Required Reports. Contemporaneously with Design-Builder's performance of Work, Design-Builder shall collect, preserve, provide HTA with access to, and submit copies to HTA in a form, format and frequency specified by HTA each of the following types of reports and data:
 - (i) Monthly report of labor by classification of management, supervision, engineering and other technical personnel used on the job;
 - (ii) Daily Labor and Equipment Reports from the Design-Builder and each Subcontractor for construction related activities;
 - (iii) Quality Assurance and Quality Control documentation as required by the Technical Specifications and this Contract;
- (b) Daily Occurrence Log. Design-Builder shall maintain a Daily Occurrence Log (in the form specified by HTA) for construction related activities which shall be maintained by the Design-Builder's Project Manager or his or her designee(s), in which shall be recorded daily in a narrative form all significant occurrences on the Project, including permit problems, unusual weather, asserted Force Majeure events, events and conditions causing or threatening to cause delay or disruption or interference with the progress of any of the Work, known injuries to person or property, a listing of each activity depicted on the Project Schedule which is being actively prosecuted, notifications given and received, and significant Project related meetings.
- (c) Daily Record. Design-Builder shall maintain a Daily Record recording all labor, Materials, and Equipment expenses which are being incurred by reason of any event, condition or circumstance that the Design-Builder believes is or may become the subject of a Claim against HTA.

Section 18.06 Amendments. The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

Section 18.07 Waiver.

- (a) Waivers. The waiver by HTA or the Design-Builder of any failure to enforce any of the terms, covenants, conditions, or other provisions of this Contract at any time shall not in any way limit or waive the waiving Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision of this Contract, or any course of dealing or custom of the trade notwithstanding, or any of its rights or remedies under law or contract as to any prior or subsequent default hereunder. The waiver by HTA of any breach or default of this Contract, or any provision hereof, shall not constitute a waiver of any other breach or default of such provision or any other provision.

- (b) Interpretations; Consent. If the Parties make and implement any interpretation of this Contract without documenting such interpretation by an instrument in writing that amends the Contract Documents and that is signed by both parties, such interpretation and/or implementation thereof will not be binding in the event of any future disputes. Furthermore, the consent by one Party of any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent has been given.
- (c) No Waiver of Legal Rights. HTA shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion or any Acceptance of the Work and payment thereof, from showing the true amount and character of the Work performed, and Materials furnished, nor from showing that any such measurements, estimate or certificate is untrue or is incorrectly made, nor that the Work or materials do not in fact conform to the Contract. HTA shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Design-Builder or upon the Payment Bond or the Performance Bond or any of the foregoing, such damages as it may sustain by reason of his failure to comply with the terms of this Contract. Neither the Approval by HTA, or any representative of HTA, nor any payment for or Approval of the whole or any part of the Work, nor any extension of time, nor any possession taken by HTA, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach.
- (d) Waivers Must Be in Writing. No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the Party providing the waiver.

Section 18.08 Independent Contractor. The Design-Builder and its Subcontractors and Suppliers are independent contractors and nothing contained in this Contract shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or other association between the Design-Builder and HTA. In no event shall the relationship between HTA and the Design-Builder be construed as creating any relationship whatsoever between HTA and the Design-Builder's employees or Subcontractors. Neither the Design-Builder nor any of its employees, or employees of Subcontractors, is or shall be deemed to be an employee of HTA. Except as otherwise specified in this Contract, the Design-Builder has sole authority and responsibility to employ, discharge, compensate, and otherwise control its employees, has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that the Design-Builder or any Subcontractor hires to perform or assist in performing the Work, and has responsibility for performance of the Work in accordance with its own means and methods.

Section 18.09 Successors and Assigns.

- (a) General. This Contract shall be binding upon and inure to the benefit of HTA and the Design-Builder and their permitted successors, assigns and legal representatives.
- (b) Assignment by HTA. HTA may assign all or part of its right, title and interest in and to this Contract, including rights with respect to the Performance Bond and the Payment Bonds, to any

other Person.

- (c) Assignment by Design-Builder. The Design-Builder may not, without the prior written consent of HTA, in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Contract. No partner, joint venturer, member or shareholder of the Design-Builder may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in the Design-Builder without the prior written consent of HTA, in its sole discretion.

Section 18.10 Designation of Representatives; Cooperation With Representatives.

- (a) Written Delegation. Except as expressly specified in this Contract, HTA may delegate, in writing, specifically described authority and responsibility within the scope of its authority and responsibility to its authorized representatives.
- (b) Defined Authority. HTA's delegation of responsibility and authority shall be limited to specifically-defined authority and responsibilities. The authority, responsibilities and limitations of any authorized representative shall be described in HTA's written notice to the Design-Builder designating the authorized representative.
- (c) Change in Authority. Delegations of authority may be changed from time to time by a subsequent writing delivered to the Design-Builder.
- (d) Technical Representatives. The Parties may designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project.
- (e) Actions in Excess of Delegation. Nothing in this Contract shall be construed to bind HTA for acts of any HTA employee, consultant, or other person that exceed the authority delegated to them herein or in any other written delegation.
- (f) Personal Liability of HTA Employees. HTA's authorized representatives are acting solely as agents and representatives of HTA when carrying out the provisions of or exercising the power HTA granted to them under the Contract. They shall not be liable either personally or as employees of HTA for actions in their ordinary course of employment. No agent, consultant, officer or authorized employee of HTA nor any member of HTA's Governing Body shall be personally responsible for any liability arising under the Contract.

Section 18.11 Gratuities and Conflict of Interest.

- (a) Prohibition on Gratuities. The Design-Builder shall not permit any officer, official, or employee of HTA to have any financial interest in the Design-Builder or other conflict of interest. In addition, the Design-Builder or its employees shall not enter into any contract involving services or property with a person or business prohibited from transacting such business with HTA, pursuant to state law or HTA's Conflicts of Interest Policy. The Design-Builder affirms that no HTA officer, official, or employee has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of the Design-Builder. If any such

interest becomes known to the Design-Builder at any time, the Design-Builder shall submit a full and complete written disclosure of such information to HTA.

- (b) Prohibition on Gifts. Neither the Design-Builder nor any of its employees, agents and representatives shall offer or give, to an officer, official or employee of HTA, any gifts, entertainment, payments, loans or gratuities. HTA may, by written notice to the Design- Builder, terminate the right of the Design-Builder to proceed under this Contract if it is found that gratuities (in the form of gifts, entertainment, or otherwise) were offered or given by the Design- Builder, or any agent of the Design-Builder, to any member of HTA's Board or any officer, agent and/or employee of HTA.
- (c) No Limitations. The rights and remedies of HTA specified in this Section are not exclusive and are in addition to any other rights and remedies allowed by law.
- (d) Officials not to Benefit. Without prior written consent from HTA, the Design-Builder shall not employ any professional or technical personnel to provide services under this Contract who are or have been at any time during the time period of this Contract in the employ of HTA. The Design-Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design-Builder, to solicit or secure this Contract, and that the Design-Builder has not paid or agreed to pay any company or person, other than a bona fide employee working for the Design- Builder, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract.

Section 18.12 Rights in Technical Data.

- (a) Grant of License. The Design-Builder hereby grants to HTA and its agents and employees, acting within the scope of their official duties, a royalty-free license for public purposes to use, publish, translate, reproduce, and deliver all Technical Data covered by any patent, copyright, or any other proprietary rights and supplied for the Project and the Work. The Design-Builder shall obtain the written permission of the owner of the patent, copyright, or other proprietary right for HTA to use such Technical Data in the manner described in this Section.
- (b) Warranty. The Design-Builder warrants that the Goods and/or processes used on and/or incorporated into the Work shall be delivered free of any rightful claim of any other party for infringement of any United States patent, copyright, or other proprietary right.
- (c) Indemnification and Response to Claimed Infringement. If a suit or proceeding based on or alleging a claimed infringement relating to the Goods and/or processes used on and/or incorporated into the Work is brought against HTA or its agents and employees, the Design-Builder shall, at its sole expense, defend and settle any such suit or proceeding, bear all cost and damages associated therewith, and indemnify and hold harmless HTA from all such costs. If the use of such Goods or processes is judged to be an infringement and their use is prohibited or enjoined, the Design-Builder shall, at its sole expense: (1) secure for HTA the right to continue using such Goods and/or processes by suspension of the prohibition or injunction or by procurement of a license; (2) replace such Goods and/or processes with non- infringing Goods or processes; (3) modify such Goods or processes so that they become non- infringing; or (4)

remove such Goods or processes and refund to HTA the amounts paid therefore under this Contract.

- (d) **Definition.** As used herein, "Technical Data" means any form or format of technical writing, manuals or instructional information, pictorial reproductions, drawings or other graphic representations, data prepared for purposes of identifying sources, size, configuration, and functional characteristics or performance requirements, performance data, computer and microprocessor software documentation (including program design language and source code listings), and other documents of a technical nature, including, which are developed or required to be delivered pursuant to this Contract.

Section 18.13 Survival. The Design-Builder's representations and warranties, indemnification and insurance obligations, and the Dispute resolution provisions in Article XV shall survive the termination of the Contract.

Section 18.14 No Third Party Beneficiaries. No provision of the Contract Documents is intended to create a third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. The duties, obligations, and responsibilities of the Parties to the Contract with respect to third parties shall be limited to those established under Third Party Agreements, Governmental Approvals, and applicable law. The Contract shall not be construed to create a contractual relationship of any kind between HTA and a Subcontractor, Supplier, or any Person other than the Design-Builder.

Section 18.15 Governing Law, Venue. This Contract shall be governed by and construed in accordance with the law of the State of California, without regard to conflict of law principles. Venue for any cause of action brought to enforce the terms of this agreement shall be in the Superior Court of Humboldt County, California.

Section 18.16 Severability. If any clause, provision, section, or part of this Contract is ruled invalid or otherwise by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section, or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Contract, which shall be construed and enforced as if this Contract did not contain such invalid or unenforceable clause, provision, section, or part.

Section 18.17 Headings. The captions of the Articles, Sections, and Subsections of this Contract are for convenience only and shall not be deemed part of the Contract or considered in construing this Contract.