

# EXHIBIT D - SAMPLE DESIGN BUILD CONTRACT

## **CITY OF HOLLYWOOD, FLORIDA**

### **DESIGN BUILD SERVICES AGREEMENT**



### **DESIGN AND CONSTRUCTION SERVICES**

**Surf Road Reconstruction DCM 19-001293**

### **DEPARTMENT OF DESIGN & CONSTRUCTION MANAGEMENT**

2207 RALEIGH STREET  
HOLLYWOOD, FLORIDA 33020



## DESIGN BUILD SERVICES AGREEMENT

### DESIGN and CONSTRUCTION SERVICES

AGREEMENT FOR DESIGN-BUILD SERVICES FOR THE \_\_\_\_\_

THIS AGREEMENT is dated \_\_\_\_\_, 20\_\_, by and between the City of Hollywood, Florida ("City"), and \_\_\_\_\_ ("CONTRACTOR or DESIGN BUILDER"). City and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is acknowledged, agree as follows:

#### ARTICLE 1. DEFINED TERMS.

Terms used in this Agreement are defined in **Request For Proposal No.** (the "RFP"), which is deemed fully incorporated herein for all purposes and have the meanings indicated in the RFP or in the attached General Conditions and Supplementary Conditions. In the event of conflict, the definition contained in the General Conditions and Supplementary General Conditions shall govern.

#### ARTICLE 2. WORK.

DESIGN BUILDER shall complete the Work as specified or indicated under the Contract Documents for the Design - Build Services for \_\_\_\_\_ ("Project"), RFP \_\_\_\_\_.

The Scope of Work is generally described as follows:

DESIGN BUILDER shall furnish all labor, material, machinery, tools and equipment, and services necessary for the design, permitting and construction of the \_\_\_\_\_, including but not limited to providing final construction plans, permitting and construction based on the design - **build criteria package prepared by the City's Design - Build Criteria Consultant.**

#### ARTICLE 3. CONTRACT TIME.

Time is of the essence in the performance of the Work under this Agreement. The Commencement Date shall be established in the Notice-to-Proceed to be issued by the City. The Successful Proposer(s) shall commence the Work within **ten (10) workdays** from the Commencement Date.

**Within 45 calendar days after the Commencement Date specified in the Notice1-to-Proceed, DESIGN BUILDER shall submit to City 60% Construction Documents ("Initial Construction Documents"). DESIGN BUILDER shall prepare and submit to City 90% Construction Documents within 30 calendar days of receipt of written comments on the Initial Construction Documents. DESIGN BUILDER shall prepare and submit to City100% Construction Documents within 30 calendar days of receipt of written comments on the 90% Construction Documents.**

It is required that Substantial Completion shall be achieved within \_\_\_\_\_ days after approval of the Construction Documents by the City. Time required to obtain all necessary regulatory agency approvals and permits is included in this time frame as well. Final Completion will be 30 days after Substantial Completion date. Five weather days or rain days are included within the overall construction time of 435 calendar days, including Alternate proposal items 1, 2, 3 & 4. The Contractor's construction schedule shall account for these five weather delay days during the period between the Commencement Date of construction and Substantial Completion, e.g., the schedule shall demonstrate that all actual Work will be substantially completed within 435 calendar days. Total Contract Time shall not exceed 648 calendar days. This includes time for the preparation and approval of 100% Construction Documents, time to review and provide comments to the DESIGN BUILDER by the City, and the time to permit and achieve final construction completion of the Project.

City and Engineer will require 21 calendar days for review and provide comments on each Construction Document submittal by the Design / Builder. If the City review takes more than 21 calendar days, the total Contract Time will be extended to account for the additional days.

#### ARTICLE 4. TERM.

The term of this Agreement shall commence upon the date of execution and shall remain in effect until acceptance of the Goods, Services and Work by the City, unless terminated earlier as provided herein.

#### ARTICLE 5. LIQUIDATED DAMAGES.

City and the DESIGN BUILDER recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the DESIGN BUILDER agree that as liquidated damages for delay (but not as a penalty), the DESIGN BUILDER shall pay the City \$\_\_\_\_\_ for each day that expires after the time specified herein for Substantial Completion until Substantial Completion is achieved, and for each calendar day that expires after the time herein for Final Completion and full acceptance is achieved. Liquidated damages are cumulative.

#### ARTICLE 6. CONTRACT PRICE.

City shall pay DESIGN BUILDER for completion of the Work in accordance with the Contract Documents the amount set forth in the CONTRACTOR'S negotiated Price Proposal Sheet, attached as Exhibit "C". The DESIGN BUILDER shall be responsible for reimbursing the City, in addition to liquidated damages, for all costs incurred by the Engineer (If applicable) or City in administering the construction of the Project beyond the Final Completion date, or beyond an approved extension of time granted to the CONTRACTOR, whichever is later. Such costs shall be deducted from the monies due to the DESIGN BUILDER for performance of Work under this Agreement by means of unilateral Change Orders issued periodically by the City, as costs are incurred by the Engineer or City and agreed by the City.

## ARTICLE 7. PAYMENT PROCEDURES.

DESIGN BUILDER shall submit Applications for Payment in accordance with the General Conditions and Supplementary Conditions. Applications for Payment will be reviewed and approved by the City as provided in the General Conditions and Supplementary Conditions.

## ARTICLE 8. INDEMNIFICATION.

To the fullest extent permitted by Laws and Regulations, the DESIGN BUILDER shall indemnify, defend, and hold harmless the City, the Engineer, and their respective officers, directors, agents, and employees, against and from all claims, liabilities, damages, losses, and costs, including but not limited to court costs and reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of DESIGN BUILDER and persons employed or used by DESIGN BUILDER in the performance of the Agreement.

The DESIGN BUILDER shall reimburse the City and the Engineer for all costs and expenses (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs) incurred by the City and the Engineer in enforcing the provisions of this indemnification.

This indemnification obligation shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the DESIGN BUILDER or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts, or insurance coverage.

The DESIGN BUILDER acknowledges receipt and the adequacy of the specific consideration in the amount of \$100.00, which sum was included in the total Proposal price and is included in the Contract Price to be paid by City to the DESIGN BUILDER for the indemnification given by the DESIGN BUILDER to the City.

## ARTICLE 9. TERMINATION.

### TERMINATION OF AGREEMENT BY CITY (DESIGN BUILDER DEFAULT):

In the event of default by the CONTRACTOR, the City shall provide DESIGN BUILDER ten (10) days written notice, as set forth in Article 28, of City's intent to terminate this Agreement and provide the DESIGN BUILDER an opportunity to remedy the conditions constituting the default. It shall be a default by the DESIGN BUILDER whenever DESIGN BUILDER shall:

- (a) declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
- (b) if a petition is filed against the DESIGN BUILDER under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the DESIGN BUILDER under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

- (c) if a trustee, receiver, custodian or agent of the DESIGN BUILDER is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the DESIGN BUILDER is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the DESIGN BUILDER'S creditors;
- (d) if the DESIGN BUILDER admits in writing an inability to pay its debts generally as they become due;
- (e) fail to provide Materials or workmanship meeting the requirements of the Contract Documents;
- (f) disregard or violate provisions of the Contract Documents or Engineer's or City's instructions;
- (g) fail to prosecute the Work or provide Services on a timely basis designed to complete on the schedule and as required by the Contract Documents;
- (h) fail to provide a qualified superintendent, competent workmen, or Materials or equipment meeting the requirements of the Contract Documents; or
- (i) fail in any other material way to comply with the requirements of the Contract Documents.

If the DESIGN BUILDER fails to remedy the conditions constituting default within the time allowed by the City, to the satisfaction of the City, the City may then issue a Notice of Termination and terminate this Agreement. The DCM Director or designee shall have the sole and absolute discretion with respect to the determination as to whether DESIGN BUILDER remedied the conditions constituting default within the time allowed by the City.

In the event the Agreement is terminated for CONTRACTOR'S default, the City may take possession of the Work and may complete the Work by whatever method or means the City may select. The cost of completing the Work shall be deducted from the balance that would have been due the DESIGN BUILDER had the Agreement not been terminated and the Work completed in accordance with the Contract Documents. If such cost exceeds the balance that would have been due, the DESIGN BUILDER shall promptly pay the excess amount to the City. If such cost is less than the balance that would have been due, the DESIGN BUILDER shall have no claim to the difference and waives any such balance by virtue of the default.

Where the DESIGN BUILDER'S services have been terminated by the CITY, the CITY alone shall determine the scope and description of the Work to be completed and the method and schedule for completing it.

Where the DESIGN BUILDER'S services have been terminated by the CITY, the termination will not affect any rights or remedies of the CITY against the DESIGN BUILDER then existing or which may thereafter accrue. Any retention or payment of moneys due the DESIGN BUILDER by the CITY will not release the DESIGN BUILDER from liability.

Upon written notice to the DESIGN BUILDER, the CITY may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In

such case, the DESIGN BUILDER shall be paid for all Work executed and any additional expenses as the City's sole and absolute discretion.

In the event it is adjudicated that DESIGN BUILDER was not in default, the Contract shall be deemed to have been terminated for convenience as described below.

#### **TERMINATION OF AGREEMENT BY CITY (FOR CONVENIENCE):**

The City, in its sole and absolute discretion, may terminate this Agreement without cause at any time if it is in the City's interest to do so upon five (5) days written notice, as set forth in Article 28, to DESIGN BUILDER. In such case, the DESIGN BUILDER shall have no claims against the City except: (1) for the value of Work performed up to the date the Agreement is terminated; and (2) for the cost of Materials on hand, in transit, or on definite commitment, as of the date this Agreement is terminated, and which would be needed in the Work and that meet the requirements of the Contract Documents.

#### **ARTICLE 10. CONTRACT DOCUMENTS.**

The Contract Documents, which comprise the entire agreement between City and DESIGN BUILDER concerning the Work, consist of this Agreement and amendments thereto, and the following:

1. All change orders which may be delivered or issued after the Effective Date of this Agreement;
2. All Addenda;
3. Proposal Forms and documents constituting the RFP, including without limitation General Conditions, Bid Summary **Price Proposal Sheet(s)**, and Information Required of Proposer, Bid Bond, and all required certificates bonds and affidavits;
4. Supplementary General Conditions, if any;
5. Design-Build Criteria;
6. Technical Specifications;
7. Referenced Standard Specification;
8. Drawings; and permit drawings; and
9. CONTRACTOR'S Proposal.

There are no Contract Documents other than those listed herein. The Contract Documents may only be amended by written Change Order as provided in the General Conditions. In the event of any conflict between this Agreement and any of the Contract Documents, the Agreement and amendments hereto shall govern first, and then the other Contract Documents in the order listed above.

#### **ARTICLE 11. ASSIGNMENT.**

No assignment by the DESIGN BUILDER of any rights or obligations hereunder or interests in the Contract Documents will be binding on the City without the written consent of the City, which may be withheld for any reason, in the City's sole discretion.

## ARTICLE 12. APPLICABLE LAW; ACCIDENT PREVENTION AND REGULATIONS.

DESIGN BUILDER shall comply will all applicable Laws and Regulations at all times. Precautions shall be exercised at all times for the protection of persons and property. The DESIGN BUILDER and all Subcontractors shall conform to all OSHA, federal, state, county, and City regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities because of inadequacies to comply with these requirements shall be borne solely by the CONTRACTOR.

## ARTICLE 13. AUDIT AND INSPECTION RIGHTS.

The City may, at reasonable times and for a period of up to three years following the date of Final Completion, audit or cause to be audited those books and records of DESIGN BUILDER that are related to CONTRACTORS performance under this Agreement. DESIGN BUILDER agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement. The City may, at reasonable times during the term hereof, inspect CONTRACTOR'S facilities and perform such inspections as the City deems reasonably necessary to determine whether the Services required to be provided by DESIGN BUILDER under this Agreement conform to the terms hereof and/or the terms of this Agreement. DESIGN BUILDER shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representatives. All inspections shall be subject to, and made in accordance with, all applicable law, including but not limited to the provisions of the City Code and the Code of Broward County, Florida, as same may be amended or supplemented from time to time.

## ARTICLE 14. AWARD OF AGREEMENT.

DESIGN BUILDER represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Contract Price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

## ARTICLE 15. WARRANTY AND GUARANTEE.

The DESIGN BUILDER warrants and guarantees to the City that all Work will be in accordance with the Contract Documents and will not be defective for a period of one year from the final completion day of the Project.

## ARTICLE 16. PUBLIC RECORDS.

DESIGN BUILDER acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of Chapter 119, Florida Statutes. DESIGN BUILDER agrees to maintain public records in CONTRACTOR'S possession or control in connection with CONTRACTOR's performance under this Agreement and to provide the public with access to public records in accordance with the

record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. DESIGN BUILDER shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City.

In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by DESIGN BUILDER to the City Manager, at no cost to the City, within seven Days of termination of this Agreement. All such records stored electronically by DESIGN BUILDER shall be delivered to the City in a format that is compatible with the City's information technology systems. Upon termination of this Agreement, DESIGN BUILDER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to DESIGN BUILDER shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

**IF THE \_\_\_\_\_ (COLLECTIVELY KNOWN AS "CONTRACTOR" IN THIS SECTION) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954.921.3211, [pcerny@hollywoodfl.org](mailto:pcerny@hollywoodfl.org), Hollywood City Hall 2600 Hollywood Blvd., Room 221 Hollywood, FL 33020.**

**Contractor must comply with public records laws, specifically to:**

- 1. Keep and maintain public records required by the public agency to perform the service.**
- 2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.**
- 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.**



**4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.**

#### ARTICLE 17. COMPLIANCE WITH FEDERAL STATE AND LOCAL LAWS.

DESIGN BUILDER understands that agreements between private entities and local governments are subject to certain Laws and Regulations, including, by example and not limitation, laws pertaining to public records, conflict of interest, and record keeping. DESIGN BUILDER agrees to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

#### ARTICLE 18. CERTIFICATE OF COMPETENCY.

DESIGN BUILDER shall, at the time of executing this Agreement, hold a valid certificate of competency or applicable license for providing the Services, if applicable, issued by the federal, state, or county examining board qualifying the DESIGN BUILDER to perform the Work. If a Subcontractor(s) is employed, an applicable certificate of competency or license issued to the Subcontractor(s) shall be submitted along with CONTRACTOR'S certificate or license prior to the commencement of Work; provided, however, that the City may, at its sole option and in its best interest, allow DESIGN BUILDER to supply the certificate to the City during the first week of Work or Services.

#### ARTICLE 19. INSURANCE.

DESIGN BUILDER shall furnish to the City of Hollywood before the commencement of Work, certificates of insurance and endorsements that indicate that insurance coverage has been obtained that meets the requirements set forth in the General and Supplemental Conditions.

#### ARTICLE 20. INDEPENDENT CONTRACTOR.

DESIGN BUILDER has been procured and is being engaged to provide Services to the City as an independent contractor, and not as an agent or employee of the City. Accordingly, DESIGN BUILDER shall not attain, nor be entitled to, any rights or benefits of the City, nor any rights

generally afforded classified or unclassified employees of the City. DESIGN BUILDER further understands that Florida Workers' Compensation benefits available to employees of the City are not available to DESIGN BUILDER and agrees to provide workers' compensation insurance for any employee or agent of DESIGN BUILDER rendering Services to the City under this Agreement.

#### ARTICLE 21. REAFFIRMATION OF REPRESENTATIONS.

DESIGN BUILDER hereby reaffirms all of the representations contained in the Solicitation documents and previously made in all Contract Documents.

#### ARTICLE 22. NONDISCRIMINATION.

DESIGN BUILDER represents and warrants to the City that DESIGN BUILDER does not and shall not engage in discriminatory practices and that there shall be no discrimination in connection with CONTRACTOR'S performance under this Agreement on account of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services. DESIGN BUILDER further covenants that no otherwise qualified individual shall, solely by reason of his/her race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for delivery of Services, be excluded from participation in, be denied any Services, or be subject to discrimination under any provision of the Contract Documents.

#### ARTICLE 23. COSTS AND ATTORNEY FEES.

If either City or DESIGN BUILDER is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to court costs and reasonable attorney's fees through and including all appeals.

#### ARTICLE 24. ENTIRE AGREEMENT.

The Contract Documents constitute the sole and entire agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth therein are of no force or effect. No modification or amendment shall be valid unless in writing and executed by properly authorized representatives of the Parties.

#### ARTICLE 25. COUNTERPARTS.

This Agreement may be executed in four or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

#### ARTICLE 26. WAIVER.

The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure. No waiver shall be effective unless made in writing.

#### ARTICLE 27. BINDING AUTHORITY.

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

#### ARTICLE 28. NOTICES.

All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered or, if by mail, on the fifth (5<sup>th</sup>) day after being posted or the date of actual receipt, whichever is earlier.

TO DESIGN BUILDER:

TO THE CITY OF HOLLYWOOD

#### ARTICLE 29. VENUE AND JURISDICTION.

This Agreement shall be construed and enforced according to the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue for any action arising out of this Agreement shall be in Broward County, Florida.

#### ARTICLE 30. HEADINGS AND INTERPRETATION.

Title and paragraph headings are for convenient reference and are not a part of this Agreement. DESIGN BUILDER has been given an opportunity for review of this Agreement by counsel. Accordingly, no party shall be deemed to have any benefit as the drafter of the document for interpretation purposes.

#### ARTICLE 31. SEVERABILITY.

Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under any applicable law, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then

same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

City and DESIGN BUILDER each binds itself, its partners, successors, assign and legal representatives to the other party, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in this Agreement and in all the Contract Documents.

**ARTICLE 32. MISCELLANEOUS.**

DESIGN BUILDER shall pay all sales, consumer, use and other similar taxes for its Services, including the Work or portions of same, which are legally required at any time during the CONTRACTOR'S performance of Work or Services. The Parties acknowledge and agree that DESIGN BUILDER shall implement, at the request of the City, a "Direct Owner's Purchase Program" in order to utilize the City's sales tax exemption for the purchase of Materials and supplies for the Project. The Parties agree that the monies saved thereunder shall not (a) decrease the Payment and Performance Bond amounts and responsibilities; (b) result in any changes to the Substantial Completion date; and/or (c) result in any liability to the City. Any savings resulting from the use of the Direct Owner's Purchase Program shall inure solely to the City. Sales tax savings related to any Materials purchased and paid for under the Direct Owner's Purchase Program shall be deducted via a change order from the Contract Price. Without limiting the foregoing, DESIGN BUILDER agrees to indemnify and hold the City harmless from any liability, claims, costs, damages, fines, fees and costs (at both trial and appellate levels) caused, resulting or arising from, or related to the "Direct Owner's Purchase Program".

**IN WITNESS WHEREOF**, City and DESIGN BUILDER have caused this Agreement to be executed the day and year first above written.

THE CITY OF HOLLYWOOD, FLORIDA

By: \_\_\_\_\_  
JOSH LEVY, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
DOUGLAS R. GONZALES  
CITY ATTORNEY

## DESIGN BUILDER

### WHEN THE DESIGN BUILDER IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature of Individual)

\_\_\_\_\_  
(SEAL)

(Witness)

(Signature of Individual)

\*\*\*\*\*

WHEN THE DESIGN BUILDER IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A

TRADE NAME:

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature of Individual)

\_\_\_\_\_  
(SEAL)

\*\*\*\*\*

## WHEN THE DESIGN BUILDER IS A PARTNERSHIP:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Name of Firm) a Partnership

\_\_\_\_\_  
(Witness)

BY: \_\_\_\_\_ (SEAL)  
(Partner)

\*\*\*\*\*

WHEN THE DESIGN BUILDER IS A CORPORATION:

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Correct Name of Corporation)

BY: \_\_\_\_\_ (SEAL)  
President

\*\*\*\*\*  
APPROVED AS TO FORM:

By \_\_\_\_\_  
Douglas R. Gonzales  
City Attorney

APPROVED AS TO FINANCE:

By \_\_\_\_\_  
David E. Keller  
Financial Services Director

**AGREEMENT CERTIFICATE (if Corporation)**

STATE OF FLORIDA        )  
                                      ) ss:  
COUNTY OF BROWARD    )

I HEREBY CERTIFY THAT a meeting of the Board of Directors of the \_\_\_\_\_

\_\_\_\_\_ (hereinafter                    “the  
Corporation”), existing under the laws of the State of \_\_\_\_\_,

held on \_\_\_\_\_, 20\_\_\_\_, the following resolution was passed and adopted: “BE IT RESOLVED THAT  
\_\_\_\_\_ (name), as

\_\_\_\_\_ (title), of the Corporation, be and  
is hereby authorized to execute an Agreement by and between the Corporation and the City of  
Hollywood, Florida and that his/her execution thereof, attested to by the Secretary of the  
Corporation, and with the Corporate Seal affixed, shall be the official act and deed of the  
Corporation”.

I further certify that said resolution is now in full force and effect.

IN WITNESS HEREOF, I have hereunto set my hand and affixed the official seal of the Corporation  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary

(SEAL)

EXHIBIT B  
GENERAL CONDITIONS  
DESIGN BUILD SERVICES

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## **GENERAL CONDITIONS**

### **ARTICLE 1 – DEFINITIONS**

In the interpretation of these Contract Documents, the following terms shall have the meaning indicated:

**ADDENDA** - Written or graphic instruments issued prior to the opening of Bids that clarify, correct or change the Contract Documents.

**CHANGE ORDER** - A written order to DESIGN BUILDER executed in accordance with City procurement procedures, as amended, authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued after the date of Award.

**CITY (OWNER)** - The City of Hollywood, Florida.

**COMMERCIALLY USEFUL FUNCTION** - shall exist when the Local MBE/SBE is responsible for execution of the Work for the Contract and is carrying out the responsibilities by actually performing, managing and supervising the Work involved. The Local MBE/SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, and ordering the material, and installing same. A commercially useful function is not performed if the role of the qualified Local MBE/SBE is that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of qualified local MBE or qualified local SBE participation.

**COMMISSION** - The City Commission of the City of Hollywood, Florida, being the legislative body of the CITY as set forth in the City of Hollywood Charter.

**CONTRACT** - The written agreement between the CITY and the DESIGN BUILDER covering the Work to be performed in accordance with the other Contract Documents that are attached to the Contract and made a part thereof. May also be referred to as "Agreement."

**DESIGN BUILDER OR CONTRACTOR** - The person, firm, or corporation with whom the CITY has entered into the Contract.

**CONTRACT DOCUMENTS** - The construction documents prepared by the Design Builder in accordance with all local, state and federal codes. Notice to Bidders, Instruction to Bidders, Proposal, Information Required of Bidders, all Bonds, Agreement, and all supporting documents, these General Requirements and Covenants, the Specifications, Drawings and Permits, together with all Addenda and Change Orders issued with respect thereto.

**CONTRACT PRICE** - Total monies payable by the CITY to the DESIGN BUILDER under the terms and conditions of the Contract Documents.

**CONTRACT TIME** - The number of days agreed to in the Proposal, commencing with the date of the Notice to Proceed for completion of the Work.

**CONTROL** - shall mean having the primary power, direct or indirect, to influence the management of a business enterprise. The controlling party must have the demonstrable ability to make independent and unilateral business decisions on a day-to-day basis, as well as the independent and unilateral ability to make decisions that may influence and chart the future course of the business.

**DATE OF SUBSTANTIAL COMPLETION** - The date when the Work on the project, or specified part thereof, is substantially completed in accordance with the Contract Documents, such that the CITY can occupy or utilize the project or specified part thereof for the use and purpose for which it was intended as determined and accepted by the ENGINEER AND PROJECT MANAGER.

**DAYS** - Calendar days of 24 hours measured from midnight.

**DRAWINGS** - The drawings showing the character and scope of the Work to be performed and that have been prepared by the DESIGN ENGINEER, approved by PROJECT MANAGER, and are referred to in and are a part of the Contract Documents.

**ENGINEER** - Licensed Design Professional of Record (Engineer, Architect or Landscape Architect).

**DESIGN BUILD/ DESIGN BUILDER**- Design-build is a project delivery method in which the owner contracts directly with one entity to provide both the design and construction of the project. The design-builder assumes responsibility and liability for both the design services and construction work for a turnkey project.

**EXCUSABLE DELAY** - Delay caused by the CITY, Force Majure.

**GENERAL CONDITIONS** - That segment of the Contract Specifications incorporating the provisions common to all CITY Construction Contracts.

**INEXCUSABLE DELAY** - Any delay caused by events or circumstances within the control of the DESIGN BUILDER not specified in the definition of excusable delay.

**INSPECTOR** - The authorized field representative of the PROJECT MANAGER.

**LIQUIDATED DAMAGES** - The amount prescribed in the Agreement to be paid to the CITY, or to be deducted from any payments due the DESIGN BUILDER, for each day of delay in completing the whole or any specified portion of the Work beyond the Contract Time. Liquidated damages are not a penalty, but rather, a good faith estimate of the damages resulting from delays in completing the Work.

**LOCAL BUSINESS** – shall mean a business that is duly licensed and authorized to engage in the business at issue and that maintains a permanent principal place of operation with full time personnel within the corporate limits of the City of Hollywood, Florida. A Post Office Box (P.O. Box) shall not be sufficient to constitute a “local business.” The business has the burden of demonstrating that it meets this definition.

**MINORITY** – shall mean a person who is a citizen or lawful permanent resident of the United States and who is a Woman, Black American, Hispanic American, Native American, Asian

Pacific American, Subcontinent Asian American or other minorities found to be disadvantaged by the SBA.

**NOTICE OF AWARD** - The written notice by the CITY to the successful Bidder stating that upon Bidder's execution of the Agreement and other requirements as listed therein within the time specified, the CITY will sign and deliver the Agreement.

**NOTICE TO PROCEED** - A written notice by the PROJECT MANAGER to the DESIGN BUILDER fixing the date on which the Contract Time will commence to run and on which the DESIGN BUILDER shall start to perform his/its obligations under the Contract Documents.

**PROJECT MANAGER** - The Director of Design and Construction Management of the CITY of Hollywood, Florida, or authorized designee.

**"OR EQUAL"** - Equivalent or superior in construction, efficiency and effectiveness to a type, brand, model or process called out in the Contract Documents to establish a basis of quality as determined by the ENGINEER.

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

**SMALL BUSINESS ENTERPRISE** – shall mean a currently functioning business enterprise that (a) is an independent for profit concern that is at least 51% owned by non-minority group member(s); (b) is independently operated and controlled by the non-minority group member(s); (c) demonstrates the capability to perform in a line of business; (d) provides a commercially useful function according to the customs and practices of the industry; and (e) is qualified by the City of Hollywood, Florida.

**NOTE:** In the event 50% of the local business is owned by a minority group member and 50% of the local business is owned by a non-minority group member, the designation selected on the Local Minority Business Enterprise and Local Small Business Enterprise Program application will be accepted.

**SMALL BUSINESS NET WORTH SIZE STANDARD** – The size standard for a minority business enterprise and a small business enterprise that participates in the City of Hollywood's Local MBE/SBE Program shall mean an independently owned and operated business concern that employs 50 or fewer permanent full-time employees and whose annual net worth does not exceed \$2,000,000. To determine the net worth, the City shall consider the most recent annual financial statement for the business or, in the case of sole proprietorships, annual financial statements for the business and the business owner. The applicant must provide documentation to demonstrate that the business employs 50 or fewer permanent full-time employees averaged over a two-year period.

**SUPPLEMENTARY CONDITIONS** - Incorporating the provisions peculiar to a specific project.

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

**SURETY** - The person, firm or corporation responsible for the Bidder's acts in the execution of the Contract, or which is bound to the CITY with and for the DESIGN BUILDER to ensure performance of the Contract and payment of all obligations pertaining to the Work.

**WORK** - All the Work materials or products specified, indicated, shown or contemplated in the Contract Documents to construct and complete the improvements, including all alterations, modifications, amendments or extensions made by Change Orders.

SAMPLE

## ARTICLE 2 - ORGANIZATIONAL ABBREVIATIONS

Abbreviations of organizations that may be used in these Specifications are:

AASHTO:	American Association of State Highway and Transportation Officials
ACI:	American Concrete Institute
AIA:	American Institute of Architects
AISC:	American Institute of Steel Construction
AITC:	American Institute of Timber Construction
ANSI:	American National Standards Institute
APWA:	American Public Works Association
ASTM:	American Society for Testing and Materials
ASCE:	American Society of Civil Engineers
ASME:	American Society of Mechanical Engineers
ASHRAE:	American Society of Heating, Refrigerating and Air Conditioning Engineers
AWPA:	American Wood Preservers Association
AWWA:	American Water Works Association
AWS:	American Welding Society
BCEQCB:	Broward County Environmental Quality Control Board
CRSI:	Concrete Reinforcing Steel Institute
FDEP:	Florida Department of Environmental Protection
FDNR:	Florida Department of Natural Resources
FDOT:	Florida Department of Transportation
FPL:	Florida Power and Light
IEEE:	Institute of Electrical and Electronic Engineers
NACE:	National Association of Corrosion Engineers



NCPI: National Clay Pipe Institute

NEC: National Electrical Code

SAMPLE

NEMA:	National Electrical Manufacturers Association
NFPA:	National Fire Protection Association
OSHA:	Occupational Safety and Health Act
PCI:	Prestressed Concrete Institute
SFBC:	South Florida Building Code, Broward Edition, Latest Revision
SFWMD:	South Florida Water Management District
SSPC:	Structural Steel Painting Council
UL:	Underwriters' Laboratories, Inc.
UNCLE:	Utility Notification Center for Location before Excavation (1-800-432-4770)
USEPA:	United States Environmental Protection Agency
USGS:	United States Geological Survey
WWEMA:	Water and Wastewater Equipment Manufacturers Association

## ARTICLE 3 - MISCELLANEOUS PRELIMINARY MATTERS

### 3.1 Contract Document Discrepancies:

Any discrepancies, conflicts, errors or omissions found in the Contract Documents shall be promptly reported to the CITY, who will issue a correction, if necessary, in writing. The DESIGN BUILDER shall comply with any corrective measures regarding the same as prescribed by the ENGINEER and shall be the responsibility of the DESIGN BUILDER.

### Submissions:

### 3.2 Unless indicated otherwise in the Contract Documents, within seven (7) days subsequent to the DESIGN BUILDER executing and submitting the required documents of Article 15 in the Instructions to Bidders, the DESIGN BUILDER shall submit to the PROJECT MANAGER an estimated progress schedule indicating the starting and completion days of the various stages of the Work. A preliminary Schedule of Values and a preliminary schedule of Shop Drawing submissions and permit shall be submitted as set forth below.

### 3.3 Pre-construction Conference:

The DESIGN BUILDER will be required to attend a mandatory Pre- Construction Conference for review of the schedules, establishing procedures and establishing a working understanding among the Parties as to the Work.

### 3.4 Contract Time:

The Contract Time will commence on the date of the Notice to Proceed and shall exist for the total number of days as specified in the Supplemental General Conditions Construction Work Schedule Major milestone 1 and 2 and as modified by any subsequent Change Orders. Unless the DESIGN BUILDER fails to complete the requirements of the Instructions to Bidders, the additional time in days (including weekends) required to correctly complete the documents will be deducted by CITY from the Contract Time specified by the DESIGN BUILDER in the Proposal.

### 3.5 Computation of Time:

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a legal holiday, such day shall be omitted from the computation.

### 3.6 Commencement of Work:

The DESIGN BUILDER shall not perform Work at the site prior to the date of the Notice to Proceed.

### 3.7            Extension of Contract Time:

Extensions of time shall be based solely upon the effect of delays to the Work as a whole. Extensions of time shall not be granted for delays to the Work unless the DESIGN BUILDER can clearly demonstrate, through schedule analysis, that the delay to the Work as a whole arose in accordance with Article 11, Changes in Contract Time, and that such delays did or will, in fact, delay the progress of Work as a whole. Time extensions shall not be allowed for delays to parts of the Work that are not on the critical path of the Project schedule. Time extensions shall not be granted until all float or contingency time, at the time of the delay, available to absorb specific delays and associated impacts, is used.

### 3.8            Notice and Service Thereof:

All notices, demands, requests, instructions, approvals and claims shall be in writing. Notices, demands, etc., shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the business address as defined at the Pre-Construction Conference.

### 3.9            Separate Contract:

The CITY reserves the right to let other Contracts in connection with the Project. The DESIGN BUILDER shall afford other DESIGN BUILDERS reasonable opportunity for the introduction and storage for their materials and the execution of their work and shall properly connect and coordinate his Work with theirs.

### 3.10           Assignments of Contract:

No assignment by the DESIGN BUILDER of the Contract or of any part thereof or any monies due or to become due thereunder shall be made.

### 3.11           Patents:

It is mutually understood and agreed that without exception, Contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. It is the intent that whenever the DESIGN BUILDER is required or desired to use any design, device, material or process covered by letters, patent, or copyright, the right for such use shall be provided for by suitable legal agreements with the Patentee or Owner, and a copy of this Contract shall be filed with the PROJECT MANAGER. However, whether or not such an agreement is made or filed as noted, the DESIGN BUILDER and the Surety in all cases shall indemnify and save harmless the CITY from any and all claims for infringement by reason of the use of any such patented design, device, material or process to be

performed under the Contract, and shall indemnify the CITY from any costs, expenses, and damages that it may be obliged to pay by reason of such infringement, at any time during the prosecution or after the completion of the Work.

3.12            Federal Excise Tax:

The forms needed for applying for exemption certificates for materials and equipment, normally subject to the Federal Excise Tax, may be obtained from the Director of Internal Revenue, Jacksonville, Florida.

The DESIGN BUILDER is solely responsible for obtaining the desired exemption certificate from the federal government.

SAMPLE

### 3.13

#### Savings Due to Excise Tax Exemptions:

The Bidder shall include in the Bid price the estimated cost of all goods, supplies and equipment that will be incorporated in the Work and the taxes that the Bidder would be required to pay if the Bidder were to purchase such goods, supplies or equipment. By subsequent Change Order(s), the Parties shall reduce the Bid price to reflect any goods, supplies and equipment purchased directly by CITY and the resulting tax savings due to CITY'S exemption from Excise Taxes.

DESIGN BUILDER shall pay all sales, consumer, use and other similar taxes required to be paid by DESIGN BUILDER in accordance with the laws and regulations of the State of Florida and its political subdivisions. Consistent with the tax exemption for municipalities provided by state law, CITY and DESIGN BUILDER shall jointly operate so that CITY may purchase directly, goods, supplies and equipment that will be incorporated into the Work. The goods, supplies and equipment that will be purchased by CITY shall be approved in advance by the Parties.

With respect to all goods, supplies and equipment to be purchased by CITY, DESIGN BUILDER shall, on behalf of CITY, take all actions necessary and appropriate to cause all purchases to be made and shall be responsible for delivery of all such goods, supplies and equipment, including verification of correct quantities and documents or orders, coordination of purchases and delivery schedules, sequence of delivery, unloading, handling and storage through installation, obtaining warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods, supplies and equipment at the time of delivery, and other arrangements normally required for the particular goods, supplies or equipment purchased. Unless otherwise directed by CITY, such actions shall also include taking the lead in efforts to resolve any and all disputes with the vendor. DESIGN BUILDER shall ensure that each vendor of goods, supplies and equipment purchased by CITY agrees in writing to the terms and conditions contained in CITY'S standard purchase order, which terms and conditions are set forth in Section 00 80 00 of the Contract Documents. Even though CITY may purchase such goods, supplies and equipment, the goods, supplies and equipment shall be stored at the site in the same manner as goods, supplies and equipment purchased by DESIGN BUILDER.

DESIGN BUILDER shall hold CITY harmless from delays in manufacturing, delivery, and other unforeseen conditions that may arise as part of the procurement of CITY-purchased goods, supplies and equipment.

### 3.14

#### Overtime Work:

The DESIGN BUILDER shall receive no additional compensation for overtime Work, i.e., Work in excess of eight hours in any one calendar day or 40 hours in any one calendar week, even though such overtime Work may be required under emergency conditions and may be ordered by the PROJECT MANAGER in writing. Additional compensation will be paid the DESIGN BUILDER for overtime Work only in the event extra Work is ordered by the PROJECT MANAGER and the Change Order specifically authorizes the use of overtime work and then only to such extent as overtime wages are regularly being paid by the DESIGN BUILDER for overtime Work of a similar nature in the same locality.

3.15                    Inspections and Testing during Overtime:

The DESIGN BUILDER shall establish a normal Work schedule that does not exceed eight hours per day in a normal Work day, nor 40 hours per week in a normal Work week. Normal Work days shall be Monday through Friday. Whenever DESIGN BUILDER Work requires scheduled overtime, unless such overtime Work is specifically required by the Contract Documents, DESIGN BUILDER shall be responsible for the extra costs incurred for providing Inspectors. Overtime shall be scheduled only after DESIGN BUILDER DESIGN BUILDER obtains written permission from the CITY. A Change Order shall be prepared to cover the CITY costs. Inspector costs shall be charged to the DESIGN BUILDER at a rate of \$80.00 per hour, with a minimum of four hours charged for weekends and holidays. If the DESIGN BUILDER has an overtime Work force size of 50 or more persons, a second Inspector will be required and the costs for two Inspectors will be \$160.00 per hour.

3.16                    Nights, Sunday or Holiday Work:

Except upon specific permission of the PROJECT MANAGER, the DESIGN BUILDER shall not perform any Work on Sundays or on legal state or municipal holidays. In accordance with CITY of Hollywood Code of Ordinances, Section 21.49, no Work between the hours of 6:00 p.m. and 8:00 a.m. will be permitted, except in case of an emergency, that violates Section 21.49 concerning noise levels. All costs of testing and inspection performed during night, Sunday or holiday Work shall be borne by the DESIGN BUILDER. The DESIGN BUILDER shall notify all regulatory agencies, including the CITY Police Department, Fire Department, and Code Enforcement Department.

3.17                    Injury or Damage Claims:

Should CITY or DESIGN BUILDER suffer injury or damage to their person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage. However, nothing herein shall be deemed to affect the rights, privileges and immunities of CITY as are set forth in Section 768.28, Florida Statutes.

## ARTICLE 4 - CONTRACT DOCUMENTS

### 4.1            Intent:

The Contract Documents comprise the entire Agreement between the CITY and DESIGN BUILDER concerning the Work. The Contract Documents can be altered only by Change Order. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Contract Documents that the DESIGN BUILDER, for due consideration, shall furnish all signed and sealed construction documents, permits equipment, material, supervision and labor (except as may be specifically noted otherwise) required or necessary to complete the Work in total accordance with the Contract Documents.

### 4.2            Reference To Standards:

Any reference to standard Specifications, manuals or codes of any organization or governmental authority shall mean the latest edition in effect as of the Bid Opening Date.

SAMPLE



## ARTICLE 5 - BONDS AND INSURANCE

### 5.1 Bid Guarantee:

Bidders maybe required to submit a Bid Guarantee in an amount indicated in the NOTICE TO BIDDERS. This Guarantee may be a Certified or Cashier's Check on a solvent national or state bank, or a Bid Bond written by a Surety licensed to do business in Florida and rated at least "A", Class X in the latest edition of "Best's Key Rating Guide" published by A.M. Best Company.

### 5.2 Performance and Payment Bond:

DESIGN BUILDER shall furnish Performance and Payment Bonds in amounts equal to the Contract Price as Security for the faithful performance and payment of DESIGN BUILDER'S obligations. The Bond or Bonds shall remain in effect one year after the date of final payment. The Surety must be qualified as specified in Paragraph 5.1. However, the City reserves the right to require additional bonds as set forth in Article 5 of the Contract.

### 5.3 Signatures:

All Bonds signed by an Agent must be accompanied by a Certified copy of the authority to act, with the Certified copy having been signed (not typed nor printed) by an Officer of the Surety and carrying the seal of the Surety.

### 5.4 Insurance Coverage:

Within ten days from Notice of Award, the DESIGN BUILDER shall purchase and maintain such insurance as will protect him from claims set forth below, which may arise out of or result from the DESIGN BUILDER'S operations under the Contract or Contract Documents, whether such operations be by himself or by any Subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims under Workmen's Compensation, Disability Benefit and other similar employer's liability acts;
- B. Claims for damages because of bodily injury, sickness or disease, or death, or death of his employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- D. Claims for damages covered by personal injury liability which are sustained (1) by any person as a result of any offense directly or indirectly related to the employment of such person by the DESIGN BUILDER, or (2) by any other person;
- E. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

- F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

SAMPLE

5.5                    Certificates of Insurance:

Within ten days of award, the DESIGN BUILDER shall obtain a Certificate of Insurance reflecting the necessary coverages and endorsements as required by the Contract Documents. Certificates of Insurance shall contain a provision that coverages afforded under the policies will not be canceled until at least 30 days prior written notice has been given to the CITY. The City of Hollywood must be named as additional insured on all coverage with the exception of Workmen's Compensation. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Policyholders and Financial Ratings must be no less than "A" and Class X, respectively, in the latest edition of "Best Key Rating Guide" published by A.M. Best Company.

5.6                    Insurance Limits of Liability:

The insurance required by this Article shall be written for no less than the level of liability specified in "Insurance Requirements", Section 2 of the Supplementary General Conditions, or required by law, whichever is greater. The insurance shall include contractual liability insurance applicable to the DESIGN BUILDER'S obligations under the Contract Documents.

The level required in Section 2 of the Supplementary General Conditions will not be reduced for any reason.

## ARTICLE 6 - AVAILABILITY OF LAND; REFERENCE POINTS

### 6.1      Rights-of-Way:

Lands or Rights-of-Way for the Work to be constructed under the Contract will be provided by the CITY. Nothing contained in the Contract Documents shall be interpreted as giving the DESIGN BUILDER exclusive occupancy of the lands or Rights-of-Way. Any additional lands or Rights-of-Way required for construction operations shall be provided by the DESIGN BUILDER at his own expense, provided that the DESIGN BUILDER shall not, and the CITY nor the PROJECT MANAGER shall be liable for any claims or damages resulting from the DESIGN BUILDER'S unauthorized trespass or use of any such properties.

### 6.2      Permits:

The DESIGN BUILDER shall secure from the agencies having jurisdiction the necessary permits to create obstructions, to make excavations if required under the Contract, and to otherwise encroach upon Rights-of-Way, and to present evidence to the PROJECT MANAGER that such permission has been granted before Work is commenced. Regulations and requirements of all agencies concerned shall be strictly adhered to in the performance of the Contract. The enforcement of such requirements under the Contract shall not be made the basis for additional compensation.

### 6.3      Lines and Grades:

The DESIGN BUILDER shall furnish all grades and all other lines required for the proper execution of the Work.

## ARTICLE 7 - DESIGN BUILDER'S RESPONSIBILITIES

### 7.1 Laws/Regulations to Be Observed:

The DESIGN BUILDER shall familiarize himself/itself and comply with all federal, state, county and CITY laws, by-laws, ordinances or regulations controlling the action or operation of those engaged or employed in the Work or affecting material used, and govern himself in accordance with them. He shall indemnify and save harmless the CITY and all of its officers, agents and employees against any claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, orders or decrees, whether by himself or his employees or Subcontractors.

### 7.2 Indemnification of City:

- (a) DESIGN BUILDER shall, at all times, indemnify, hold harmless and defend CITY, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of error, omission or negligent act of DESIGN BUILDER, its agents, servants or employees in the performance of services under this Contract.
- (b) DESIGN BUILDER further agrees, at all times, to indemnify, hold harmless and defend CITY, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of DESIGN BUILDER resulting from the performance of services under the Contract Documents.
- (c) The obligations of the DESIGN BUILDER above shall not extend to the liability of the City of Hollywood.
- (d) The provisions of (a) and (b) above shall survive the expiration or earlier termination of the Contract Documents.

### 7.3 Guarantee of Payments:

The DESIGN BUILDER guarantees the payments of all just claims for materials, supplies, tools, labor and other just claims against him or any Subcontractors in connection with the Contract, and his bond will not be released by final acceptance and payment by the CITY unless and until all such claims are paid or released.

### 7.4 Permits and Licenses:

The DESIGN BUILDER shall obtain all permits and licenses required to perform the Work. A copy of the permit(s) and such conditions and requirements thereon are a part of the Contract Documents. Failure to obtain such permits or licenses shall subject the DESIGN BUILDER to the provisions of the Florida Building Code, latest edition.

### 7.5 Emergencies:

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, DESIGN BUILDER, without special instruction or authorization from PROJECT MANAGER or CITY, is obligated to act to prevent threatened damage, injury or loss. DESIGN BUILDER shall give PROJECT MANAGER prompt written notice of any significant changes in the Work or deviations from the Contract Documents resulting therefrom.

7.6            Substitutes or "Or Equal":

A.        Substitutes or "Or-Equal" Materials or Equipment:

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the ENGINEER if sufficient information is submitted by the DESIGN BUILDER to allow the ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The ENGINEER will be allowed 30 days within which to evaluate each proposed substitute. The ENGINEER will be the sole judge of acceptability, and NO SUBSTITUTE WILL BE ORDERED, INSTALLED OR UTILIZED

WITHOUT THE ENGINEER's PRIOR WRITTEN ACCEPTANCE, which will be evidenced by either a Change Order or an approved set of Shop Drawings. Requests for review of substitute items of material and equipment will not be accepted by the ENGINEER from anyone other than the DESIGN BUILDER. The procedure for review by the ENGINEER is as follows:

If the DESIGN BUILDER wishes to furnish or use a substitute item of material or equipment, the DESIGN BUILDER shall make written application to the ENGINEER for acceptance thereof, certifying that the proposed substitute will adequately perform the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified. In addition, the application shall:

1. State that the evaluation and acceptance of the proposed substitute will not prejudice the DESIGN BUILDER'S achievement of completion on time.
2. State whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents to adapt design to the proposed substitute. The DESIGN BUILDER shall be responsible for any extra design adaptation costs associated with a proposed substitute.
3. State whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.
4. Provide complete substitute identification and description, including manufacturer's and local distributor's name and address, performance and test data, and reference standards.

5. Provide samples, as required by CITY or ENGINEER.
  6. Provide name and address of similar projects on which the proposed substitute has been used, and date of installation.
  7. Identify all variations of the proposed substitute from that specified.
  8. Indicate available maintenance, repair and replacement service.
  9. Submit an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other DESIGN BUILDER affected by the resulting change. The DESIGN BUILDER shall be responsible for the costs of redesign and claims of other DESIGN BUILDERS.
  10. Provide any additional data about the proposed substitute as the CITY or ENGINEER may require of the DESIGN BUILDER.
- B. Substitute means, method, technique, sequence or procedure of construction:
- If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the DESIGN BUILDER may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the ENGINEER, if the DESIGN BUILDER submits sufficient information to allow the ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the ENGINEER will be similar to that provided in Paragraph 7.6 A.
- C. The CITY may require the DESIGN BUILDER to furnish, at the DESIGN BUILDER's expense, a special performance guarantee or other surety with respect to any substitute.
- D. The ENGINEER will record time required by the ENGINEER and/or the ENGINEER'S consultants in evaluating substitutions proposed by the DESIGN BUILDER and in making changes in the Contract Documents occasioned thereby. Whether or not the ENGINEER accepts a proposed substitute, THE DESIGN BUILDER SHALL REIMBURSE THE CITY FOR THE CHARGES OF THE ENGINEER AND THE ENGINEER'S CONSULTANTS FOR EVALUATING EACH PROPOSED SUBSTITUTE.
- E. All costs resulting from changes to/adaptations of the Work shall be paid by the DESIGN BUILDER including but limited to design, materials, installation, etc.

#### 7.7 Shop Drawings:

Shop Drawing submittals shall be as follows:

- A. The DESIGN BUILDER shall submit a sufficient number of copies of each Shop Drawing to enable the CITY and ENGINEER to retain three copies unless additional

copies are specified in the Contract Documents. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.

The DESIGN BUILDER shall submit Shop Drawings for all equipment, apparatus, machinery, fixtures, piping, fabricated structures, manufactured articles and structural components, along with a Manufacturer's Certified Affidavit that the item supplied complies with the design Specifications and all other submittal requirements.

- B. Shop Drawings for structural components, electrical or mechanical systems shall be Certified by a Registered Engineer of the discipline involved.
- C. The DESIGN BUILDER shall thoroughly review and check the Shop Drawings and each copy shall show his approval thereon. If the Shop Drawings show or indicate departures from the Contract requirements, the DESIGN BUILDER shall make specific mention thereof in his letter of transmittal. Failure to point out such departures shall not relieve the DESIGN BUILDER from his responsibility to comply with the Drawings and Specifications.
- D. No approval will be given to partial submittals of Shop Drawings for items which interconnect and/or are interdependent. It is the DESIGN BUILDER's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them himself and then make one submittal to the ENGINEER along with his comments as to compliance, non-compliance, or features requiring special attention.
- E. If catalog sheets or prints of manufacturer's standard drawings are submitted as Shop Drawings, any additional information or changes on such Drawings shall be typewritten or lettered in ink.
- F. The DESIGN BUILDER shall keep one set of Shop Drawings marked with the ENGINEER'S approval at the job site at all times.
- G. Where a Shop Drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved by the ENGINEER.
- H. Approval of the Shop Drawings shall constitute approval of the subject matter thereof only, and not of any structure, material, equipment or apparatus shown or indicated. The approval of the Shop Drawings will be general and shall not relieve the DESIGN BUILDER of responsibility for the accuracy of such Drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract and not indicated on the Drawings. Approval shall not relieve the DESIGN BUILDER from responsibility for errors or omissions of any sort on the Shop Drawings.

#### 7.8      Personnel:

- A. Supervision and Superintendence:



1. The DESIGN BUILDER shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The DESIGN BUILDER shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the DESIGN BUILDER shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. The DESIGN BUILDER shall be responsible to insure that the finished Work complies accurately with the Contract Documents.
2. The DESIGN BUILDER shall keep on the Work site at all times during its progress a competent resident Superintendent fluent in both oral and written communication in the English language, who shall not be replaced without written notice to the PROJECT MANAGER except under extraordinary circumstances. The Superintendent will be the DESIGN BUILDER'S representative at the site and shall have authority to act on behalf of the DESIGN BUILDER. All communications given to the Superintendent shall be as binding as if given to the DESIGN BUILDER.

B. Workforce:

1. None but skilled workers shall be employed on Work requiring special qualifications. When required in writing by the PROJECT MANAGER, the DESIGN BUILDER or any Subcontractor shall discharge any person who is, in the opinion of the PROJECT MANAGER, incompetent, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the consent of the PROJECT MANAGER. Such discharge shall not be the basis of any claim for damages against the CITY or any CITY agents.
2. With respect to all skilled, semi-skilled and unskilled workers employed on the Project under the Contract, preference in employment shall be given to persons residing in Hollywood when such persons are available and qualified to perform the Work to which the employment relates. No person shall be employed in violation of the state or national labor laws. No person under the age of 16 years shall be employed on a Project under the Contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the Project under the Contract, provided that this shall not operate against the employment of physically handicapped persons otherwise employable where such persons may be safely assigned to Work that they can ably perform. No person currently serving sentences in a penal or correctional institution and no inmate of an institution for mentally defective persons shall be employed on a Project under the Contract without specific approval of the PROJECT MANAGER.
3. No discrimination shall be made in the employment of persons on the Work by the DESIGN BUILDER or by any Subcontractor under him because of the race, color, sex, age or religion of such persons, and there shall be full compliance with the provisions of applicable state and federal laws in this regard.

## 7.9

### Safety and Protection:

#### A. Federal Safety and Health Regulations:

The DESIGN BUILDER and Sub-subcontractors shall comply with the provisions of the Occupational Safety and Health Standards promulgated by the Secretary of Labor under the "Occupational Safety and Health Act of 1970".

#### B. Responsibilities:

The DESIGN BUILDER shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The DESIGN BUILDER shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. All employees on the Work and other persons who may be affected thereby.
2. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site.
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocating or replacement in the course of construction.

#### C. Designated Safety Officer:

The DESIGN BUILDER shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the DESIGN BUILDER'S Superintendent unless otherwise designated in writing by the DESIGN BUILDER to the PROJECT MANAGER.

#### D. Protection of the Work:

Until acceptance of the Work by the CITY, it shall be under the charge and in care of the DESIGN BUILDER, and he shall take every necessary precaution against injury or damage to the Work by action of the elements or from the execution or from the non-execution of the Work. The DESIGN BUILDER shall rebuild, restore and make good, at his own expense, all injuries or damages to any portion of the Work occasioned by any of the above causes before its completion and acceptance.

## 7.10

### Traffic Control, Public Safety and Convenience:

#### A. The DESIGN BUILDER shall at all times conduct the Work so as to assure the least possible obstruction to traffic and inconvenience to the general public and provide adequate protection of persons and property in the vicinity of the Work.

#### B. WHEN THE NORMAL FLOW OF TRAFFIC WILL BE IMPAIRED OR DISRUPTED IN ANY MANNER ON ANY STREET, THE DESIGN BUILDER SHALL NOTIFY THE POLICE TRAFFIC SERGEANT AT (954) 921-3610 AT LEAST 48 HOURS IN ADVANCE.

- C. Streets shall not be closed, except when and where directed by the PROJECT MANAGER, and whenever a street is not closed, the Work must be conducted with the provision for safe passageway for traffic at all times. The DESIGN BUILDER shall make all necessary arrangements concerning maintenance of traffic and selection of detours required.
- D. When permission has been granted to close an existing roadway or portion thereof, the DESIGN BUILDER shall furnish and erect signs, barricades, lights, flags and other protective devices as necessary subject to the approval of the PROJECT MANAGER. From sunset to sunrise, the DESIGN BUILDER shall furnish and maintain as many yellow lights as the PROJECT MANAGER may direct.
- E. During working hours, the DESIGN BUILDER shall furnish watchmen in sufficient numbers to protect and divert the vehicular and pedestrian traffic from working areas closed to traffic, or to protect any new Work. Failure to comply with this requirement will result in the PROJECT MANAGER shutting down the Work until the DESIGN BUILDER shall have provided the necessary protection.
- F. No separate payment will be made for such signs, barricades, lights, flags, watchmen or other protective devices as required, with all costs thereof deemed to be included in the prices bid for the various items scheduled in the bid.
- G. Sidewalks, gutters, drains, fire hydrants and private drives shall, insofar as practicable, be kept in condition for their intended uses. While the Work is actually going on at any location, as much as half the street width at that location may be barricaded to exclude traffic entirely, but street traffic shall not be obstructed needlessly. Fire hydrants on or adjacent to the Work shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within ten feet of any such hydrant.
- H. Construction material stored upon the public street shall be placed so as to cause as little obstruction to the general public as is reasonably possible.

#### 7.11 Use of Explosives:

When the use of explosives is necessary for the prosecution of the Work, the DESIGN BUILDER shall observe the utmost care so as not to endanger life or property, and whenever directed, the number and size of charges shall be limited. All explosives shall be stored in a secure manner and all such storage places shall be clearly marked "DANGEROUS EXPLOSIVES" and shall be in care of a competent watchman at all times. The DESIGN BUILDER must familiarize himself with all laws and ordinances pertaining thereto and govern himself and his employees accordingly.

#### 7.12 Loading of Structures:

The DESIGN BUILDER shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the DESIGN BUILDER subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

7.13

Concerning Subcontractors:

- A. The DESIGN BUILDER, with his own forces, shall perform the Work as determined by the Contract Price. Each Subcontractor shall be properly licensed for the type of Work he is to perform.
- B. A copy of each subcontract shall be filed promptly with the PROJECT MANAGER upon request. Each subcontract shall contain a reference to the Contract between the CITY and the DESIGN BUILDER, and the terms and conditions of the Contract shall be made a part of each subcontract. Each subcontract shall provide for termination of same by the DESIGN BUILDER upon written order of the PROJECT MANAGER if the subcontractor BUILDER fails to comply with the requirements of this Contract.

The DESIGN BUILDER shall be responsible to the CITY and ENGINEER for the acts and omissions of his subcontractors and their employees to the same extent as he is responsible for the acts and omissions of his own employees. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the CITY or ENGINEER, nor relieve the DESIGN BUILDER of any liability or obligation under the Contract.

7.14

Materials and Equipment:

- A. Material for the Work:
  - 1. The DESIGN BUILDER shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
  - 2. Unless otherwise specified, shown or permitted by the PROJECT MANAGER, all material and equipment incorporated in the Work shall be new and of current manufacture. The PROJECT MANAGER may request the DESIGN BUILDER to furnish manufacturer's certificates to this effect.
  - 3. The City or ENGINEER may require any or all materials to be subjected to test by means of samples or otherwise, at production points or after delivery. The DESIGN BUILDER shall afford such facilities as the ENGINEER may require for collecting and forwarding samples, which samples shall be furnished by the DESIGN BUILDER without charge. The DESIGN BUILDER shall furnish evidence satisfactory to the ENGINEER that the materials and finished articles have passed the required test prior to the incorporation of such materials and finished articles in the Work. Unless otherwise provided, the cost of such inspection and testing shall be as provided in Article 12.2.
  - 4. All packaged manufactured products for use on the Work shall be delivered to the Work in their original, unopened packages, bearing thereon the manufacturer's name and the brand name of the product.

5. Wherever any product or material is selected to be used on the Work, all such products or material shall be of the same brand and manufacture throughout the Work.
6. All equipment, tools and machinery used for handling material or executing any part of the Work shall be maintained in a satisfactory working condition. All equipment utilized on any portion of the Work shall be such that no injury to personnel, the Work, adjacent property or other objects will result from its use.
7. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

B. Storage of Materials:

All materials and equipment including that ordered by the CITY designed for permanent installation in the Work shall be properly stored by the DESIGN BUILDER to insure protection against deterioration of any type. These materials shall be placed as to cause a minimum of inconvenience to other DESIGN BUILDER on the Work and to the public. The storage piles shall be arranged to facilitate inspections, and any deterioration shall be grounds for rejection.

1. Materials stored in public Rights-of-Way shall be stored in such a manner so as to be compatible with the Traffic Control requirements set forth in Paragraph 7.10. Materials shall be stored so as not to deny access to public or private property. Stored materials shall be adequately marked with barricades and/or flashing warning lights, where necessary, so as to protect the materials from damage and to protect the public health, safety and welfare.
2. Lawns, grass plots or other private property shall not be used for storage purposes without written permission of the Owner or Lessee of that private property. Should the DESIGN BUILDER desire to store equipment or materials of any kind on the property of the CITY, he must obtain permission from the PROJECT MANAGER. The CITY reserves the right to order materials to be removed or relocated in such approved storage areas, if necessary.
3. The protection of stored materials shall be the DESIGN BUILDER'S responsibility, and the CITY shall not be liable for any loss of materials, by theft or otherwise, nor for any damage to the stored materials.

C. Salvage of Materials and Equipment:

The CITY reserves the right to retain title to all soil, sand, stone, gravel, equipment, machinery or any other material that was a part of the structure, site or Right-of-Way and which was developed from excavations or other operations connected with the Work. The DESIGN BUILDER will be permitted to use in the Work, without charge, any such material that meets the requirements of the Contract Documents. For that material that the CITY desires to retain, the DESIGN BUILDER shall, at his expense,

transfer the material to a site within the CITY as designated by the PROJECT MANAGER. That material which the CITY does not wish to retain shall be the property of the DESIGN BUILDER and removed from the site at DESIGN BUILDER'S expense.

7.15      Temporary Utilities:

The DESIGN BUILDER shall provide and maintain at his own expense all water, power, telephone and sanitary facilities as required to comply with state and/or local Codes and Regulations. If water, including that for testing, is required, it is the DESIGN BUILDER'S responsibility to arrange through the CITY Water Department for a water meter. A deposit to be paid by the DESIGN BUILDER is required for meter rental and all water shall be purchased at the prevailing rate.

7.16      Review of Records:

The DESIGN BUILDER shall allow and permit the PROJECT MANAGER or his duly authorized representative to inspect and review all payrolls, records of personnel, conditions of employment, invoice of materials, books of accounts and other relevant data and records pertinent to the Contract and subcontracts.

7.17      Use of Premises:

DESIGN BUILDER shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits or required by the Contract Documents, and shall not interfere with the premises or operation of the CITY Utilities facilities with construction equipment or other materials or equipment. Construction that interferes with Plant Operations shall be fully coordinated with and approved by the PROJECT MANAGER.

7.18      DESIGN BUILDER'S Daily Reports:

Except where otherwise provided, the DESIGN BUILDER shall complete a daily report indicating manpower, major equipment, subcontractors etc., involved in the performance of the Work. The daily report shall be completed on forms approved by the PROJECT MANAGER, and shall be submitted to the ENGINEER at the conclusion of each work day.

7.19      Record Documents:

The DESIGN BUILDER shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, Shop Drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to PROJECT MANAGER for examination and shall be delivered to PROJECT MANAGER upon completion of the Work.

7.20      Cleanliness of the Site:

During the progress of the Work, the DESIGN BUILDER shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the DESIGN BUILDER shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the site clean and ready for occupancy by the CITY. The DESIGN BUILDER shall restore to their original condition

those portions of the site not designated for alteration by the Contract Documents.

7.21            Dust Control:

It shall be the DESIGN BUILDER's responsibility to control dust by watering as directed by the CITY or ENGINEER. The water used shall be paid for by the DESIGN BUILDER. Should the DESIGN BUILDER fail to control dust to the satisfaction of the PROJECT MANAGER, the CITY will control the dust by whatever means the CITY desires and the DESIGN BUILDER shall pay all expenses incurred by the CITY associated with the control of the dust.

7.22            Continuing the Work:

The DESIGN BUILDER shall carry on the Work and maintain the Progress Schedule during all disputes or disagreements with the CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the DESIGN BUILDER and the CITY may otherwise agree in writing.

ARTICLE 8 - CITY'S RESPONSIBILITIES

8.1            Communications:

The CITY shall issue all communications to the DESIGN BUILDER through the PROJECT MANAGER.

8.2            Furnish Contract Documents:

The CITY shall furnish the number of Contract Documents as specified in the Supplementary General Conditions to the DESIGN BUILDER at no cost. Referenced Standard Specifications Manuals, guidebooks, etc., will not be provided.

8.3            Furnish Right-of-Way:

The CITY shall furnish the necessary land or Right-of-Way on which the Work is to be accomplished and will provide lines and grades as specified in Article 6.

8.4            Timely Delivery of Materials:

The CITY shall be responsible for the delivery of any CITY furnished material, equipment or labor as specified in the Contract Documents.

## ARTICLE 9 – **ENGINEER AND PROJECT MANAGER'S STATUS**

### **9.1 Authority of the ENGINEER and PROJECT MANAGER:**

- A. The general supervision of the execution of the Contract is vested in the PROJECT MANAGER, who is the CITY's sole representative during the construction period. The instructions of the PROJECT MANAGER are to be strictly and promptly followed in every case. The DESIGN BUILDER'S representative (Article 7.8 A. 1.) shall be responsible for the execution of any instructions given by the PROJECT MANAGER during the absence of the DESIGN BUILDER.
- B. The PROJECT MANAGER is the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work. Claims, disputes and other matters relating to the acceptability of Work or requirements of the Contract Documents shall be referred in writing to the PROJECT MANAGER within 15 days of the event, with a request for a formal decision, which the PROJECT MANAGER will render in writing within a reasonable time. This rendering of a decision by the PROJECT MANAGER will be a condition precedent to any exercise by the CITY or DESIGN BUILDER of rights or remedies as either may otherwise have under the Contract Documents or at law in respect to any such claim, dispute or other matter.
- C. The PROJECT MANAGER will issue with reasonable promptness any written clarifications or interpretations of the Contract Documents as he or she shall deem necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If, as a result of a clarification or interpretation, either the DESIGN BUILDER or PROJECT MANAGER believes a Change Order is justified, it shall be submitted as provided in the Contract Documents.
- D. The ENGINEER has approval authority over the acceptability of all material or equipment furnished, Shop Drawings, Change Orders, Work performed and the rate of progress of the Work. Verification of the quantities of Work performed for pay purposes is the responsibility of the PROJECT MANAGER.
- E. The ENGINEER also has the authority to disapprove or reject Work that is defective, and may require special inspection or testing of the Work, whether or not it is fabricated, installed or completed.
- F. The PROJECT MANAGER has the authority to suspend the Work wholly or in part for such period or periods as may be deemed necessary due to the unsuitable prosecution of the Work or for such time as is necessary due to failure on the part of the DESIGN BUILDER to carry out orders given or perform any or all provisions of the Contract. The DESIGN BUILDER shall not suspend the Work and shall not remove any equipment, tools, lumber or other materials without the written permission of the PROJECT MANAGER.

### **9.2 Access to the Work:**

- A. The PROJECT MANAGER is to have free access to the materials and Work at all times for laying out, measuring or inspecting same, and the DESIGN BUILDER is to



afford him all necessary facilities and assistance for so doing.

### **9.3 Limitations on the ENGINEER and PROJECT MANAGER'S Responsibilities:**

Neither the ENGINEERS nor PROJECT MANAGER'S authority to act under this Article or elsewhere in the Contract Documents, nor any decision made by the ENGINEER or PROJECT MANAGER in good faith either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the ENGINEER or PROJECT MANAGER to the DESIGN BUILDER, any subcontractor, any manufacturer, fabricator, supplier or distributor or any of their agents or employees or any other person performing any of the Work.

- A. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of the ENGINEER or PROJECT MANAGER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that the ENGINEER or PROJECT MANAGER has authority to supervise or direct performance of the Work.
- B. The ENGINEER will not be responsible for the DESIGN BUILDER'S means, methods, techniques, sequences or procedures of construction, nor the safety precautions and programs incident thereto, and the ENGINEER will not be responsible for the DESIGN BUILDER's failure to perform the Work in accordance with the Contract Documents.
- C. The ENGINEER or PROJECT MANAGER will not be responsible for the acts or omissions of the DESIGN BUILDER or of any subcontractor, or of the agents or employees of any DESIGN BUILDER or subcontractors, or of any other persons at the site or otherwise performing any of the Work.

### **9.4 Inspectors:**

- A. Inspectors employed by the CITY assist the PROJECT MANAGER in ascertaining that the Work conforms to the Contract Documents and are authorized to inspect all Work done and material furnished as representatives of the PROJECT MANAGER. Inspectors shall be stationed at the site of the Work to report to the PROJECT MANAGER as to the progress of the Work and the quality of workmanship and material.
- B. In case of any dispute arising between the DESIGN BUILDER and the Inspector, the Inspector shall have the authority to reject material or to suspend the Work until the question at issue can be referred to and decided upon by the ENGINEER or PROJECT MANAGER.
- C. If the DESIGN BUILDER refuses to suspend operation on verbal order, the Inspector shall issue a written order giving the reason for shutting down the Work.

After placing the order in the hands of the supervisor or person in charge, the Inspector shall immediately leave the job. Work done during the absence of the Inspector, after such written notice, will not be accepted nor paid for.

- D. Inspectors are not authorized to revoke, alter, enlarge, relax or release any requirements of these Contract Documents, nor to issue instructions contrary to them. Inspectors shall in no case act as foreman or perform other duties for the DESIGN BUILDER, nor interfere with management of the Work by the latter. Any instructions that Inspectors may give the DESIGN BUILDER shall in no way be construed as releasing the DESIGN BUILDER from fulfillment of the terms of the Contract.
- E. The payment of any compensation, whatever may be its character or form, or the giving of any gratuity, or the granting of any valuable favor, by the DESIGN BUILDER to any Inspector, directly or indirectly, is strictly prohibited and any such act on the part of the DESIGN BUILDER will constitute a violation of the Contract and may subject the DESIGN BUILDER to other penalties provided for by law or ordinance.

#### 9.5

##### Inspections:

- A. The ENGINEER and PROJECT MANAGER will make, or have made, such inspections and tests as he deems necessary to assure that the Work is being accomplished in accordance with the requirements of the Contract. In the event such Inspections or tests reveal non-compliance with the requirements of the Contract, the DESIGN BUILDER shall bear the cost of such corrective measures as well as the cost of subsequent reinspection and retesting.
- B. Work done in the absence of a prescribed inspection may be required to be removed and replaced under proper inspection. The entire cost of removal and replacement, including the cost of all material that may be furnished by the CITY and used in the Work thus removed shall be borne by the DESIGN BUILDER, regardless of whether the Work removed is found to be defective or not. Work covered up without the authority of the ENGINEER and PROJECT MANAGER shall, upon order of the ENGINEER or PROJECT MANAGER, be uncovered to the extent required, and the DESIGN BUILDER shall similarly bear the entire cost of performing all the Work and furnishing all the material necessary for the removal of the covering and its subsequent replacement.
- C. Unless otherwise provided, the cost of inspection and all inspection fees imposed by public agencies other than the fees associated with the issuance of the Master Building Permit by the CITY shall be paid by the DESIGN BUILDER.
- D. No inspection nor any failure to inspect at any time or place shall relieve the DESIGN BUILDER from any obligation to perform all of the Work in strict conformance with the requirements of the Contract Documents.

## ARTICLE 10 - CHANGES IN THE WORK/CONTRACT PRICE

### 10.1 Changes in the Work or Terms of Contract Documents:

- A. Without invalidating the Contract and without notice to any Surety, CITY reserves and shall have the right, from time to time, to make such increases, decreases or other changes in the character or quantity of the Work as may be considered necessary or desirable to complete, fully and acceptably, the proposed construction in a satisfactory manner. Any extra or additional Work within the scope of this Project must be accomplished by means of appropriate Clarifications or Change Orders.
- B. Any changes to the terms of the Contract Documents must be contained in a written document, executed by the Parties with the same formality and of equal dignity prior to the initiation of any Work reflecting such changes.

This section shall not prohibit the issuance of Change Orders executed only by CITY as provided.

### 10.2 Supplemental Instructions - Clarifications:

- A. The CITY, through the PROJECT MANAGER, shall have the right to approve and issue Clarifications setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Work execution, providing the Clarifications involve no change in the Contract Price or the Contract Time.
- B. The PROJECT MANAGER shall have the right to approve and issue Clarifications setting forth written orders, instructions, or interpretations concerning the Contract Documents or their performance, provided such Clarifications involve no change in the Contract Price or the Contract Time.

### 10.3 Change Orders:

- A. Changes in the quantity or character of the Work within the scope of the Project that are not properly the subject of Clarifications, including all changes resulting in changes in the Contract Price or the Contract Time, shall be authorized only by or Change Orders approved in advance and issued in accordance with the provisions of the CITY Procurement Code, as amended from time to time.
- B. DESIGN BUILDER shall not start Work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved by the CITY. Upon receipt of an approved Change Order, DESIGN BUILDER shall promptly proceed with the Work set forth within the document.
- C. Change Orders shall be issued for change in Contract Price related to Cost Allowances specifically included on the Proposal Bid Form. Change Orders shall be issued when required for all other Contract Price Changes. The term "Change Order(s)" shall be used to include "Change Orders" with the exception that Change Order shall not be used for any Contract Time adjustments.

- D. In the event satisfactory adjustment cannot be reached for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, CITY reserves the right, at its sole option, to either terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the disputed Work, or the Work shall be performed on the "cost of work" basis as described in Article 10.4.
- E. On approval of any Contract change increasing the Contract Price, DESIGN BUILDER shall ensure that the performance bond and payment bond are increased so that each reflects the total Contract Price as increased.
- F. Under circumstances determined necessary by CITY, Change Orders may be issued unilaterally by CITY.

10.4      Value of Change Order Work:

- A. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
  - A.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved, subject to the provisions of Article 10.4.G.
  - A.2 By mutual acceptance of a lump sum which DESIGN BUILDER and CITY acknowledge contains a component for overhead and profit.
  - A.3 On the basis of the "cost of work," determined as provided in this Article, plus a DESIGN BUILDER's fee for overhead and profit that is to be determined as provided in Article 10.4.D.
- B. The term "cost of work" means the sum of all direct costs necessarily incurred and paid by DESIGN BUILDER in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Article 10.4.C.
  - B.1 Payroll costs for employees in the direct employ of DESIGN BUILDER in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by CITY and DESIGN BUILDER. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include but not be limited to salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of

performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by CITY.

- B.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to DESIGN BUILDER unless CITY deposits funds with DESIGN BUILDER with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to CITY and DESIGN BUILDER shall make provisions so that they may be obtained. Rentals of all construction equipment and machinery and the parts thereof, whether rented from DESIGN BUILDER or others in accordance with rental agreements approved by CITY with the advice of PROJECT MANAGER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of the agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
- B.3 Payments made by DESIGN BUILDER to subcontractors for Work performed by subcontractors, if required by CITY, DESIGN BUILDER shall obtain competitive bids from subcontractors acceptable to DESIGN BUILDER and shall deliver such bids to CITY, who will then determine, with the advice of PROJECT MANAGER, which bids will be accepted. If the subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor cost of the work shall be determined in the same manner as DESIGN BUILDER'S cost of the work. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.
- B.4 Cost of special engineers, including but not limited to engineers, architects, testing laboratories, and surveyors employed for services specifically related to the performance of the Work described in the Change Order.
- B.5 Supplemental costs including the following:  
The proportion of necessary transportation, travel and subsistence expenses of DESIGN BUILDER's employees incurred in discharge of duties connected with the Work except for local travel to and from the site of the Work.

Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen that are consumed in the performance of the Work, and cost less market value of such items used but not consumed that remains the property of DESIGN BUILDER.

Sales, use, or similar taxes related to the Work and for which DESIGN BUILDER is liable, imposed by any governmental authority. Deposits lost for causes other than DESIGN BUILDER'S negligence, royalty payments and fees for permits and licenses. The cost of utilities, fuel and sanitary facilities

at the site. Receipted minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

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

C. The term "cost of the work" shall not include any of the following:

- C.1 Payroll costs and other compensation of DESIGN BUILDER'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by DESIGN BUILDER whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed-upon schedule of job classifications referred to in this Article, all of which are to be considered administrative costs covered by DESIGN BUILDER'S fee.
- C.2 Expenses of DESIGN BUILDER'S principal and branch offices other than DESIGN BUILDER'S office at the site.
- C.3 Any part of DESIGN BUILDER'S capital expenses, including interest on DESIGN BUILDER'S capital employed for the Work and charges against DESIGN BUILDER for delinquent payments.
- C.4 Cost of premiums for all Bonds and for all insurance, whether or not DESIGN BUILDER is required by the Contract Documents to purchase and maintain the same, except for additional bonds and insurance required because of changes in the Work.
- C.5 Costs due to the negligence or neglect of DESIGN BUILDER, any subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- C.6 Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in this Section.

D. DESIGN BUILDER'S fee allowed to DESIGN BUILDER for overhead and profit shall be determined as follows:

- D.1 A mutually acceptable fixed fee or if none can be agreed upon;
- D.2 A fee based on the following percentages of the various portions of the cost of the Work:

For costs incurred under Article 10.4.B.1, DESIGN BUILDER'S fee shall not exceed ten percent (10%);

For costs incurred under Article 10.4.B.3 and B.4, DESIGN BUILDER'S fee shall not exceed **seven and one half percent (7.5%)**, and if a subcontract is on the basis of cost of the work plus a fee, the maximum allowable to the subcontractor as a fee for overhead and profit shall not exceed ten percent (10%);

No fee shall be payable on the basis of costs itemized under Article 10.4.B.5 and Article 10.4.C.

- E. The amount of credit to be allowed by DESIGN BUILDER to CITY for any such change that results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in anyone change, the combined overhead and profit shall be figured on the basis of the net increase, if any. However, DESIGN BUILDER shall not be entitled to claim lost profits for any Work not performed.
- F. Whenever the cost of any Work is to be determined pursuant to Articles 10.4.B and 10.4.C, DESIGN BUILDER will submit in a form acceptable to CONSULTANT an itemized cost breakdown together with the supporting data.
- G. Where the quantity of any item of the Work that is covered by a unit price is increased or decreased by more than 20% from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order shall be issued to adjust the unit price, if warranted.
- H. Whenever a change in the Work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, DESIGN BUILDER shall submit an initial cost estimate acceptable to ENGINEER and CITY:
  - H.1 Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.
  - H.2 Whenever a change involves DESIGN BUILDER and one or more subcontractor and the change is an increase in the Contract Price, overhead and profit percentage for DESIGN BUILDER and each subcontractor shall be itemized separately.
- I. Each Change Order must state within the body of the Change Order whether it is based upon unit price, negotiated lump sum, or "cost of the work."

10.5 Notification and Claim for Change of Contract Price:

- A. Any claim for a change in the Contract Price shall be made by written notice by DESIGN BUILDER to the CITY and to ENGINEER within five (5) calendar days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within twenty (20) calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and

documentation shall be provided unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim, and such notice shall be accompanied by DESIGN BUILDER'S written notarized statement that the adjustment claimed is the entire adjustment to which the DESIGN BUILDER has reason to believe it is entitled as a result of the occurrence of such event. All claims for changes in the Contract Price shall be in accordance with Articles 10.3 and 10.4 hereof if CITY and DESIGN BUILDER cannot otherwise agree. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT PRICE SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**

10.6 Notice of Change:

If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be DESIGN BUILDER'S responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. The DESIGN BUILDER shall furnish proof of such adjustment to the CITY. Failure of the DESIGN BUILDER to obtain such approval from the Surety may be a basis for termination of the Contract by the CITY.

10.7 Records:

The DESIGN BUILDER'S representative and the PROJECT MANAGER shall compare records of extra Work done at the end of the day. Such records shall be made in duplicate upon a form provided for such purpose by the PROJECT MANAGER and shall be signed by both the Inspector and the DESIGN BUILDER'S representative, one copy being submitted to the PROJECT MANAGER and the other being retained by the DESIGN BUILDER.

10.8 Cancelled Items and Payments Therefore:

The CITY COMMISSION shall have the right to cancel those portions of the Contract relating to the construction of any item provided therein. Such cancellation shall entitle the DESIGN BUILDER to payment in a fair and equitable amount covering all items of cost incurred by him prior to the date of cancellation or suspension of the Work. The DESIGN BUILDER shall be allowed a profit percentage on the materials used and on construction Work actually performed at the same rates as provided for "Extra Work", but no allowance will be made for anticipated profits. Acceptable materials ordered by the DESIGN BUILDER or delivered on the Work, prior to date of such cancellation or suspension, may be purchased from the DESIGN BUILDER by the CITY at actual cost and shall thereupon become property of the CITY, or may be returned to the manufacturer for a reasonable restocking charge.

10.9 Full Payment:

The Compensation herein provided shall be received and accepted by the DESIGN BUILDER as payment in full for all extra Work done or costs incurred in the event of



cancellation.

SAMPLE

## ARTICLE 11 – CHANGES IN THE CONTRACT TIME

### 11.1 Change Order:

The Contract Time may only be changed by a Change Order. A FULLY EXECUTED CHANGE ORDER MUST EXIST PRIOR TO EXTENSION OR SHORTENING OF THE CONTRACT TIME.

### 11.2 Notification and Claim for Change of Contract Time:

- A. Any claim for a change in the Contract Time shall be made by written notice by the DESIGN BUILDER to the CITY and to PROJECT MANAGER within five calendar days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within 20 calendar days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation shall be provided unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim, and such notice shall be accompanied by DESIGN BUILDER's written notarized statement that the adjustment claimed is the entire adjustment to which the DESIGN BUILDER has reason to believe it is entitled as a result of the occurrence of such event. All claims for changes in the Contract Time shall be determined in accordance with Articles 10.3 and 10.4 if CITY and DESIGN BUILDER cannot otherwise agree. **IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS FOR CHANGES TO THE CONTRACT TIME SHALL BE WAIVED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.**
- B. The Contract Time will be extended an amount equal to time lost on critical Work items due to delays beyond the control of and through no fault or negligence of DESIGN BUILDER if a claim is made as provided in Article 11.2. Such delays shall include but not be limited to acts or neglect by any separate DESIGN BUILDER employed by CITY, fire, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

### 11.3 Basis for Extension:

Extensions of time shall be considered and will be based solely upon the effect of delays to the Work as a whole. Extensions of time shall not be granted for delays to the Work unless the DESIGN BUILDER can clearly demonstrate, through schedule analysis, that the delay to the Work as a whole arose in accordance with Article 12.3 or Article 15.1, and that such delays did or will, in fact, delay the progress of Work as a whole. Time extensions shall not be allowed for delays to parts of the Work that are not on the critical path of the project schedule. Time extensions shall not be granted until all float or contingency time, at the time of the delay, available to absorb specific delays and associated impacts is used.

### 11.4 Change of Time Due to Contract Execution Problems:

Refer to Article 3.4 for a decrease in Contract Time when the DESIGN BUILDER fails to return the correctly executed Contract Documents within the time allowed.

11.5            Change of Time Due to Change Order Evaluation:

When evaluating a proposed Change Order, the PROJECT MANAGER shall have access to any available float or contingency time. Extension will only be considered in accordance with Article 11.3.

11.6            Change of Time and Inspection and Testing:

Neither observations by the ENGINEER or PROJECT MANAGER, nor inspections, tests or approvals by others, passing or failing, will be cause for consideration of a time extension.

11.7            Change of Time and Defective Work:

- A. If Work is found to be defective, DESIGN BUILDER shall bear all remedial expenses, including any additional costs experienced by CITY due to delays to others performing additional Work. DESIGN BUILDER shall further bear the responsibility for maintaining schedule and will be excluded from a time extension and the recovery of delay damages due to the uncovering.
- B. If the Work is found to be defective pursuant to the Specifications, but the CITY chooses to accept it at its sole discretion, DESIGN BUILDER shall bear the responsibility for maintaining schedule, and will be excluded from a time extension and the recovery of delay damages due to the uncovering.

11.8            Liquidated Damages:

All time limits stated in the Contract Documents are of the essence. The provisions of this Article 15 shall not exclude recovery for damages by CITY as indicated in Section 3 of the Supplementary General Conditions and Exhibit 5 of the Agreement.

ARTICLE 12 – WARRANTY AND GUARANTEE;  
TEST AND INSPECTIONS.  
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1            Warranty and Guarantee:

The DESIGN BUILDER warrants and guarantees to the CITY and the ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to the DESIGN BUILDER. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article.

12.2            Tests and Inspections:

- A.     The DESIGN BUILDER shall give the PROJECT MANAGER and, when appropriate, the Building Department and other regulatory authorities that have jurisdiction over the Work, timely notice of readiness of the Work for all required inspections, tests or approvals.
- B.     All inspections performed as a result of the issuance of the Master Building Permit shall be performed by the CITY. All costs associated with such inspections shall be paid by the CITY, EXCEPT THAT should the test or inspection fail to pass, the DESIGN BUILDER shall pay all costs associated with the rework and the retesting.
- C.     When any other regulatory authority, by virtue of its rules or regulations requires specific tests or inspections, the DESIGN BUILDER shall assume full responsibility for and pay all costs in connection with such tests and inspections.
- D.     The DESIGN BUILDER shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the ENGINEER's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to ENGINEER's acceptance thereof for incorporation in the Work and as otherwise specified in the Contract Documents.
- E.     Neither observations by the ENGINEER or PROJECT MANAGER nor inspections, tests or approvals by others shall relieve the DESIGN BUILDER from his obligations to perform the Work in accordance with the Contract Documents.

12.3            Uncovering Work:

- A.     If any Work that is to be inspected, tested or approved is covered without written concurrence of the ENGINEER or PROJECT MANAGER, it must, if requested by the ENGINEER or PROJECT MANAGER, be uncovered. Such uncovering and replacement shall be at the DESIGN BUILDER'S expense.

- B. DESIGN BUILDER must contact all regulatory agencies issuing construction permits to make all necessary inspections. If DESIGN BUILDER fails to have the necessary inspections performed and such failure results in uncovering of Work already performed, DESIGN BUILDER shall be responsible for all related time delays and monetary costs.
- C. If the ENGINEER and PROJECT MANAGER considers it necessary or advisable that Work previously covered with his permission or cognizance be observed, inspected or tested, the DESIGN BUILDER, at the ENGINEER or PROJECT MANAGER'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER and PROJECT MANAGER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the DESIGN BUILDER shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services. If, however, such Work is not found to be defective, the DESIGN BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if he makes a claim therefor in accordance with Article 10.2 and Article 11.2.

12.4      City May Stop the Work:

If the Work is defective, or the DESIGN BUILDER fails to supply sufficient skilled workmen or suitable materials or equipment, the CITY may order the DESIGN BUILDER to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, this right of the CITY to stop the Work shall not give rise to any duty on the part of the CITY to exercise this right for the benefit of the DESIGN BUILDER or any other party.

12.5      Correction or Removal of Defective Work:

If required by the ENGINEER or PROJECT MANAGER, the DESIGN BUILDER shall promptly, without cost to the CITY and as specified by the ENGINEER or PROJECT MANAGER, either correct any defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by the ENGINEER or PROJECT MANAGER, remove it from the site and replace it with non-defective Work or materials.

12.6      One- Year Correction Period:

If within one year after the date of Substantial Completion or Final Completion, as applicable, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, the DESIGN BUILDER shall promptly without cost to the CITY and in accordance with the ENGINEER's or PROJECT MANAGER'S written instructions, either correct such defective Work, or if it

has been rejected by the ENGINEER or PROJECT MANAGER, remove it from the site and replace it with non-defective Work. If the DESIGN BUILDER does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the ENGINEER or PROJECT MANAGER may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by the DESIGN BUILDER.

12.7            Acceptance of Defective Work:

If instead of requiring correction or removal and replacement of defective Work, the ENGINEER or PROJECT MANAGER prefers to accept it, he may do so. In such case, if acceptance occurs prior to the ENGINEER or PROJECT MANAGER'S recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price, or if the acceptance occurs after such recommendation, an appropriate amount shall be paid by the DESIGN BUILDER to the CITY.

12.8            City May Correct Defective Work:

If the DESIGN BUILDER fails within a reasonable time after written notice of the ENGINEER or PROJECT MANAGER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by the ENGINEER or PROJECT MANAGER in accordance with Paragraph 12.5, or if the DESIGN BUILDER fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), the CITY may, after seven days' written notice to the DESIGN BUILDER, correct and remedy any such deficiency. In exercising its rights under this Paragraph, the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the CITY may exclude the DESIGN BUILDER from all or part of the site, take possession of all or part of the Work, and suspend the DESIGN BUILDER'S services related thereto, take possession of the DESIGN BUILDER'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the DESIGN BUILDER but which are stored elsewhere. The DESIGN BUILDER shall allow the CITY, the CITY'S representatives, agents and employees such access to the site as may be necessary to enable the CITY to exercise its rights under this Paragraph. All direct and indirect costs of the CITY in exercising such rights shall be charged against the DESIGN BUILDER in an amount verified by the ENGINEER or PROJECT MANAGER, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Work of others destroyed or damaged by correction, removal or replacement of the DESIGN BUILDER'S defective Work. The DESIGN BUILDER shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the CITY of the CITY'S rights hereunder.

## ARTICLE 13 – PAYMENTS TO THE DESIGN BUILDER

### 13.1 Basis of Payment:

Progress payments shall be based on the aggregate of the unit price amounts listed in the Proposal or in the Schedule of Values, which have been incorporated in the Work acceptable to the PROJECT MANAGER.

### 13.2 Unit Price Inclusion:

The unit prices stated in the Proposal include all costs and expenses for materials, labor, tools, equipment, transportation, commissions, patent fees and royalties, removing crossings or other obstructions, protection or maintaining pipes, drains, railroad tracks, buildings, bridges, or other structures furnishing temporary crossings or bridges, furnishing all supplemental construction stakes, batter boards, templets, common and ordinary labor for handling materials during inspection replacing any property damage, together with any and all costs or expenses for performing and completing the Work as specified.

### 13.3 Schedule of Values: (Lump Sum Price Breakdown)

A Schedule of Values must be submitted within seven days subsequent to the DESIGN BUILDER executing and submitting the Documents required in Article 16 of the Instructions to Bidders. The schedules shall be satisfactory in form and substance to the PROJECT MANAGER, and shall include quantity and unit prices aggregating the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the schedule of values by the PROJECT MANAGER, it shall be incorporated into a form of Application for Payment acceptable to the PROJECT MANAGER.

### 13.4 Changed Conditions: (Unit Price Only)

It is mutually agreed that due to latent field conditions that cannot be foreseen at the time of advertising for bids, adjustments of the Plans to field conditions will be necessary during construction, and therefore, such changes in the plans shall be recognized as constituting a normal and accepted margin of adjustment not unusual and not involving or permitting any change or modification of unit prices, in which case payment will be made for the revised quantities at the unit price bid in the Proposal.

### 13.5 Application for Progress Payment:

On the 20<sup>th</sup> day of the month or the first working day thereafter, the DESIGN BUILDER shall submit to the PROJECT MANAGER for review an Application for Payment form filled out and signed by the DESIGN BUILDER. The form shall be notarized and shall cover the Work completed as of the date of the application. The Application for Payment shall be accompanied by a Schedule of Values and any other supporting documentation as the PROJECT MANAGER may reasonably require.

13.6            Payment for Materials:

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such data satisfactory to the PROJECT MANAGER as will establish the CITY's title to the material and equipment and protect the CITY's interest therein, including applicable insurance.

13.7            Affidavit Required:

All Applications for Payment shall include an Affidavit of the DESIGN BUILDER stating that all previous progress payments received on account of the Work have been applied to discharge in full all of DESIGN BUILDER'S obligations reflected in prior Applications for Payment. The amount of retainage with respect to progress payments will be 5%.

13.8            Retainage:

The amount of retainage with respect to progress payments will be 5% until 50% completion of the construction services purchased pursuant to the Contract. After 50% completion of the construction services purchased pursuant to the Contract, the CITY shall reduce to 2.5 percent the amount of retainage withheld from each subsequent progress payment made to the DESIGN BUILDER. For purposes of this paragraph, the term "50% completion" means the point at which the CITY has expended 50% of the total cost of the construction services purchased as identified in the Contract, together with all costs associated with existing Change Orders and other additions or modifications to the construction services provided for in the Contract.

13.9            DESIGN BUILDER'S Warranty of Title:

The DESIGN BUILDER warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the CITY at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereinafter in these General Conditions referred to as "Liens").

13.10          Review of Application for Payment:

The PROJECT MANAGER will, within seven days, review the Application for Payment and either approve and submit it for payment or notify the DESIGN BUILDER of the deficiencies such that the DESIGN BUILDER may make the necessary corrections and resubmit in time for the month's payment. However, the PROJECT MANAGER may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations. He may also refuse to recommend any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such extent as may be necessary in the PROJECT MANAGER'S opinion to protect the CITY from loss because:



- A. The Work is defective, or completed Work has been damaged requiring correction or replacement.
- B. Written claims have been made against the CITY or Liens have been filed in connection with the Work.
- C. The Contract Price has been reduced because of Change Order.
- D. The CITY has been required to correct defective Work or complete the Work in accordance with Article 12.8.
- E. The DESIGN BUILDER'S unsatisfactory prosecution of the Work in accordance with the Contract Documents.
- F. The DESIGN BUILDER'S failure to make payment to subcontractors for labor, materials or equipment.

13.11      Payment to the DESIGN BUILDER:

Payments are made only on the 15<sup>th</sup> day or first workday thereafter of each month.

ARTICLE 14 – SUBSTANTIAL COMPLETION, PARTIAL  
UTILIZATION, FINAL CLEAN UP, INSPECTION, PAYMENT  
AND ACCEPTANCE

14.1            Substantial Completion:

When the DESIGN BUILDER considers the entire Work ready for its intended use, the DESIGN BUILDER shall, in writing to the PROJECT MANAGER, certify that the entire Work is substantially complete and request that the PROJECT MANAGER issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the DESIGN BUILDER and the ENGINEER and PROJECT MANAGER shall make an inspection of the Work to determine the status of completion. If the ENGINEER and PROJECT MANAGER do not consider the Work substantially complete, the ENGINEER and PROJECT MANAGER will notify the DESIGN BUILDER, in writing, giving his reasons therefor. If the ENGINEER and PROJECT MANAGER considers the Work substantially complete, the ENGINEER and PROJECT MANAGER will prepare and deliver to the DESIGN BUILDER a Certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate a proposed Punch List, developed by the DESIGN BUILDER, of items to be completed or corrected before final payment.

Within 10 days after delivery of the certificate, the CITY shall review the proposed Punch List and either approve it or contact the DESIGN BUILDER to commence good faith efforts to develop a Punch List that is satisfactory to both parties. If the Parties are unable to resolve any differences they may have in the development of the Punch List, the ENGINEER shall resolve their differences. The Parties shall expedite the process of developing the Punch List with the intent of finalizing the Punch List within 30 days after the date of Substantial Completion.

At the time of delivery of the Certificate of Substantial Completion, the PROJECT MANAGER will deliver to the DESIGN BUILDER written notice as to division of responsibilities pending final payment between the CITY and the DESIGN BUILDER with respect to security, operation, safety, maintenance, heat, utilities and insurance, which will be binding on the CITY and the DESIGN BUILDER until final payment. Unless otherwise stated herein or on the Certificate of Substantial Completion, all building, product, equipment, and machinery warranties will commence on the date of Substantial Completion. The CITY shall have the right to exclude the DESIGN BUILDER from the Work after the date of Substantial Completion, but the CITY shall allow the DESIGN BUILDER reasonable access to complete or correct items on the Punch List.

14.2            Partial Utilization:

Use by the CITY of any finished part of the Work that has specifically been identified in the Contract Documents or which the ENGINEER and the DESIGN BUILDER agree constitutes a separately functioning and usable part of the Work that can be used by the CITY without significant interference with DESIGN BUILDER'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the

Work subject to the following:

- A. The PROJECT MANAGER at any time may request, in writing, that the DESIGN BUILDER permit the CITY to use any such part of the Work that the PROJECT MANAGER believes to be ready for its intended use and substantially complete. If the DESIGN BUILDER agrees, the DESIGN BUILDER will certify to the PROJECT MANAGER that that part of the Work is substantially complete and request the ENGINEER and PROJECT MANAGER to issue a Certificate of Substantial Completion for that part of the Work. The DESIGN BUILDER, at any time, may notify the PROJECT MANAGER, in writing, that the DESIGN BUILDER considers any such part of the Work ready for its intended use and substantially complete and request the ENGINEER and PROJECT MANAGER to issue a Certificate of Substantial Complete for that part of the Work. Within a reasonable time after either such request, the DESIGN BUILDER and the ENGINEER or PROJECT MANAGER shall make an inspection of that part of the Work to determine its status of completion. If the ENGINEER or PROJECT MANAGER does not consider that part of the Work to be substantially complete, the ENGINEER or PROJECT MANAGER will notify the DESIGN BUILDER, in writing, giving the reasons therefore. If the ENGINEER or PROJECT MANAGER considers that part of the Work to be substantially complete, the provisions of Article 14.1 will apply with respect to the issuance of a Certificate of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto. It shall be understood by the DESIGN BUILDER that until such written notification is issued, all responsibility for care and maintenance of all of the Work shall be borne by the DESIGN BUILDER. Upon issuance of a written notice of partial utilization, the CITY will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

#### 14.3      Final Clean-Up:

Upon completion of the Work and before final inspection shall be made, the DESIGN BUILDER shall clean and remove from the site, the Right-of-Way and adjacent property, all surplus and discarded materials, rubbish, and temporary structures; restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the Work; and shall leave the site and vicinity unobstructed in a neat and presentable condition throughout the entire area or length of the Work under Contract. The placing of materials of every character, rubbish, or equipment on the abutting property, with or without the consent of the property owner(s) shall not constitute satisfactory disposal. If the Work is of such a character as may be done by block or sections, the DESIGN BUILDER may be required to promptly remove and dispose of accumulated rubbish, debris or surplus materials from blocks or sections as completed or partially completed. No separate payment will be made for final cleaning up and restoration of property, but all costs thereof shall be included in the prices bid for the various scheduled items of Work.

#### 14.4      Final Inspection:

Upon written notice from the DESIGN BUILDER that the entire Work or an agreed portion

thereof is complete and final clean-up has been completed, the ENGINEER or PROJECT MANAGER will make a final inspection with the DESIGN BUILDER and will notify the DESIGN BUILDER, in writing, of all particulars in which the inspection reveals that the Work is incomplete or defective. The DESIGN BUILDER shall immediately take such measures as are necessary to remedy such deficiencies.

14.5            Final Application for Payment:

After the DESIGN BUILDER has completed all such corrections to the satisfaction of the ENGINEER and PROJECT MANAGER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in Article 7.19 of the General Conditions and other documents), all as required by the Contract Documents and after the ENGINEER and PROJECT MANAGER has indicated that the Work is acceptable (subject to the provisions of Article 14.9), the DESIGN BUILDER may make Application for Final Payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to the CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the CITY, the DESIGN BUILDER may furnish receipts or releases in full, an affidavit of the DESIGN BUILDER that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the CITY or the 'ITY'S property might in any way be responsible, have been paid or otherwise satisfied, and consent of the Surety, if any, to final payment. If any subcontractor BUILDER or Supplier fails to furnish a release or receipt in full, the DESIGN BUILDER may furnish a Bond or other collateral satisfactory to the CITY to indemnify the CITY against any Lien.

14.6            Final Payment and Acceptance:

If on the basis of the ENGINEER and PROJECT MANAGER'S observation of the Work during construction and final inspection, and the ENGINEER and PROJECT MANAGER'S review of the final Application for Payment and accompanying documentation, all as required by the Contract Documents, the ENGINEER and PROJECT MANAGER are satisfied that the Work has been completed and the DESIGN BUILDER'S other obligations under the Contract Documents have been fulfilled, the ENGINEER and PROJECT MANAGER will recommend payment. Thereupon, the ENGINEER and PROJECT MANAGER will give written notice to the CITY and the DESIGN BUILDER that the Work is acceptable, subject to the provisions of Article 14.9.

14.7            Payment of Retainage Without Final Completion:

If, through no fault of the DESIGN BUILDER, final completion of the Work is significantly delayed and if the PROJECT MANAGER so confirms, the CITY shall, upon receipt of the DESIGN BUILDER'S final Application for Payment and recommendation of the PROJECT MANAGER, and without terminating the Contract, make payment of the balance due for

the portion of the Work fully completed and accepted. If the remaining balance to be held by the CITY for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if Bonds have been furnished as required in Article 5.2, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the DESIGN BUILDER to the PROJECT MANAGER with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.8                    DESIGN BUILDER'S Continuing Obligation:

The DESIGN BUILDER'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the ENGINEER and PROJECT MANAGER, nor the issuance of a Certificate of Substantial Completion, nor any payment by the CITY to the DESIGN BUILDER under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the CITY, nor any act of acceptance by the CITY or any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by the ENGINEER and PROJECT MANAGER pursuant to Article 14.6, nor any correction of defective Work by the CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the DESIGN BUILDER'S obligation to perform the Work in accordance with the Contract Documents (except as provided in Article 14.9).

14.9                    Waiver of Claims:

The making and acceptance of final payment will constitute:

- A.     A waiver of all claims by the CITY against the DESIGN BUILDER, except claims arising from unsettled Liens or from defective Work appearing after final inspection pursuant to Article 14.4 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein. However, it will not constitute a waiver by the CITY of any rights in respect of the DESIGN BUILDER'S continuing obligations under the Contract Documents.
- B.     A waiver of all claims by the DESIGN BUILDER against the CITY other than those previously made in writing and still unsettled.

## ARTICLE-15 - SUSPENSION OF WORK AND TERMINATION

### 15.1 City May Suspend Work:

The CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the DESIGN BUILDER, which will fix the date on which Work will be resumed. The DESIGN BUILDER shall resume the Work on the date so fixed. The DESIGN BUILDER may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension upon written request with supporting documentation to the City, the City may approve such written request at the City's sole and absolute discretion.

### 15.2 DESIGN BUILDER May Stop Work or Terminate:

If through no act or fault of the DESIGN BUILDER, the Work is suspended for a period of more than ninety (90) days by the CITY or under an order of court or other public authority, or the CITY fails for sixty (60) days to pay the DESIGN BUILDER any sum finally determined to be due, then the DESIGN BUILDER may, upon seven (7) days' written notice to the CITY, terminate the Contract and may recover from the CITY payment for all Work performed and any reasonable expense sustained at the City's absolute and sole discretion. In addition, and in lieu of terminating the Contract, if the CITY has failed to make any payment as aforesaid, the DESIGN BUILDER may upon seven (7) days' written notice to the CITY stop the Work until payment of all amounts then due are paid. The provisions of this paragraph shall not relieve the DESIGN BUILDER of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the CITY.

- END OF SECTION -

EXHIBIT C  
SUPPLEMENTARY GENERAL CONDITIONS  
DESIGN BUILD SERVICES  
INDEX TO ARTICLES

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## EXHIBIT C

### **General Note:**

The General Conditions refer to specific section numbers in the Supplementary General Conditions. These reference numbers may not coordinate with the actual Article numbers utilized in the Supplementary General Conditions. The DESIGN BUILDER shall comply with all General Conditions and all Supplementary General Conditions as well as related conditions included in the General Requirements, Division 1 of the Technical Specifications. Incorrect cross-reference numbers shall not relieve this requirement.

### **1. PROJECT SCHEDULE**

Time is of the essence for this Work. The following defines the schedule for the project:

#### CONSTRUCTION WORK SCHEDULE CONSTRUCTION / STARTUP / ACCEPTANCE

<u>Major Milestones</u>	<u>Completion Time (calendar days)</u>
1. Major Milestone – Substantial Completion <sup>(1)</sup>	350 days Calendar Days
2. Major Milestone – Project Closeout <sup>(2)</sup>	30 days Calendar Days

Failure to meet any of the above defined construction/startup/acceptance completion dates shall subject the DESIGN BUILDER to pay damages as specified in Article 3 of these Supplementary General Conditions.

#### <sup>(1)</sup> Substantial Completion

- i. Refer to General Conditions Articles 14.1 and 14.2 (Certification of Substantial Completion Services appended to the Supplementary General Conditions).
- ii. Substantial Completion shall also include:
  - Record drawings received and accepted by the PROJECT MANAGER
  - The systems shall be tested and demonstrated for the ENGINEER'S and PROJECT MANAGER'S acceptance. The ENGINEER shall determine testing and demonstration sufficient for acceptance.
  - Guarantee certifications, performance affidavits, and all other certifications received and accepted by the ENGINEER and PROJECT MANAGER.

DESIGN BUILDER shall also conform to construction sequence constraints as defined on the Drawings and in Specifications.



## EXHIBIT C

### <sup>(2)</sup> Project Closeout

#### i. Project Closeout shall include:

- All requirements of substantial completion met plus the following:
  - a. Site cleanup and restoration completed
  - b. All other site Work completed
  - c. Minor punch list items completed  
(minor as defined by the ENGINEER in the field)
  - d. Demobilization completed
  - e. Releases from all parties who are entitled to claims

## 2. **DESIGN BUILDERS – INSURANCE REQUIREMENTS**

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Owner. All companies shall have a Florida resident agent and be rated a minimum A-VII, as per A.M. Best Company's Key Rating Guide, latest edition.

Any sub-DESIGN BUILDER shall supply such similar insurance required of the DESIGN BUILDER. Such certificates shall name the City as additional insured on the general liability and auto liability policies.

The DESIGN BUILDER shall furnish certificates of insurance to the Risk Management Director for review and approval prior to the execution of this agreement. No failure to renew, material change or cancellation of, the insurance shall be effective without a 30-day prior written notice to and approval by the Owner.

#### A. **Commercial General Liability:**

Prior to the commencement of work governed by this contract, the DESIGN BUILDER shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, at a minimum:

- a. Premises Operations
- b. Products and Completed Operations
- c. Personal & Advertising Injury
- d. Damages to rented premises

The minimum limits acceptable shall be:

\$1,000,000.00 Each Occurrence / \$2,000,000.00 General Aggregate

The City of Hollywood shall be named as Additional Insured and all required endorsements shall be supplied to the City.

#### B. **Automobile Liability Insurance:**

Recognizing that the work governed by this contract requires the use of vehicles, the DESIGN BUILDER, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, at a minimum, liability coverage for:

## EXHIBIT C

### Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

\$1,000,000.00 Combined Single Limit

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000.00 per Person  
\$ 1,000,000,000.00 per Occurrence  
\$ 100,000.00 property damage

The City of Hollywood shall be named as Additional Insured.

### C. Worker's Compensation Insurance:

Prior to the commencement of work governed by this contract, the DESIGN BUILDER shall obtain Workers' Compensation Insurance with limits sufficient to respond to applicable state statutes.

In addition, the DESIGN BUILDER shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000.00 Bodily Injury by Accident  
\$500,000.00 Bodily Injury by Disease, policy limits  
\$500,000.00 Bodily Injury by Disease, each employee

### D. Professional Liability Insurance:

Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the DESIGN BUILDER shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance that will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the DESIGN BUILDER arising out of work governed by this contract.

The minimum limits of liability shall be:

\$1,000,000.00 each claim / \$2,000,000.00 aggregate

If coverage is provided on a claims made basis an "extended reporting period" of five years will be required.

### E. Pollution Liability:

The minimum limits of liability shall be:

\$1,000,000.00 each claim / \$2,000,000.00 aggregate

Including non-owned disposal sites.

### F. Cyber Liability:

The minimum limits of liability shall be:

EXHIBIT C

\$1,000,000.00 each claim / \$2,000,000.00 aggregate

**G. Builders Risk:**

The DESIGN BUILDER shall be required to purchase and maintain, throughout the life of the contract, and until the project is accepted by the City, Builder's Risk Insurance on an All Risk of Loss form. Coverage shall include:

Theft, Aircraft, Windstorm, Vehicles, Hail, Smoke, Explosion, Fire, Riot, Collapse, Civil Commotion, Flood

The policy limits shall be no less than the amount of the finished project and coverage shall be provided on a completed value basis. Property located on the construction premises that is intended to become a permanent part of the building shall be included as property covered. The policy shall be endorsed permitting the City to occupy the building prior to completion without affecting the coverage. The City of Hollywood shall be named as Additional Insured and Loss Payee. The Builder's Risk Insurance shall be provided on or before the execution of the Phase II agreement.

Deductible not to exceed \$100,000

**2. LIQUIDATED DAMAGES**

Liquidated damages shall be paid by the DESIGN BUILDER to the CITY for failure to complete Work on time in accordance with the following schedule:

CONSTRUCTION/STARTUP/ACCEPTANCE:		
<u>Major Milestones</u>	<u>Completion Time (calendar days)</u>	<u>Liquidated Damages</u>
1. Substantial Completion	350	\$156/day
2. Project Closeout	30	\$156/day

The CITY is authorized to deduct the sums described above from the monies that may be due to the DESIGN BUILDER for the Work under the contract. Liquidated damages shall be additive such that the maximum total that may be deducted shall be \$312/day. Other damages for failure to meet warranty conditions as defined in other sections of the Specifications shall also be added with liquidated damages for failure to meet completion times. The Parties recognize and understand that liquidated damages are not a penalty for DESIGN BUILDER'S failure to comply with Contract deadlines, but rather, is a good faith estimate of the damages that the CITY will incur as a result of such failure.

**3. RESTRICTED AREA**

The DESIGN BUILDER shall, in installing the new facilities, confine all activities within the CITY property, easement, and right-of-ways indicated.

**4. EXISTING FACILITIES AND STRUCTURES**

## EXHIBIT C

All existing facilities shall be protected, and if damaged, shall be repaired by the DESIGN BUILDER at no additional cost to the CITY.

### 5. **EXPLOSIVES**

Explosives shall not be used on this project.

### 6. **CONTRACT DOCUMENTS**

The CITY will provide the DESIGN BUILDER with one set of Contract Documents after issuance of the Notice to Proceed.

### 7. **REQUIRED NOTIFICATIONS**

When provisions of the pertinent codes, standards or regulations conflict with this Specification, the more stringent shall apply.

Prior to any site Work, the DESIGN BUILDER shall notify the Engineering and Construction Services Division Inspector at (954) 921-3930.

Prior to excavation at the site, the DESIGN BUILDER shall notify the appropriate utilities and Sunshine State One-Call of Florida, Inc. (formerly U.N.C.L.E.) at 1-800-432-4770 for locations of buried utilities.

Prior to closure of any CITY streets or alleyways, or other activity requiring the diversion of traffic, the DESIGN BUILDER shall notify and obtain the permission of the CITY Fire and Police Communications Section at (954) 967-4321. The City Traffic Engineer, Rick Mitinger, must approve the Maintenance of Traffic plan for any lane closures a minimum of 30 days prior to the scheduled closure.

### 8. **NOTICE OF COMPLETION**

See attached form.

### 9. **PREVAILING WAGE REQUIREMENT**

A. The DESIGN BUILDER shall be responsible for ensuring payment of the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by him/her or his/her sub-DESIGN BUILDER on the Work covered by the contract. The rate shall be not less than the prevailing rate of wages and fringe benefits payment or cash equivalent for similar skills or classifications of work as established by the General Wage Decision by the United States Department of Labor for Broward County, Florida, that is in effect prior to the date the CITY issued the invitation for bids for this project (the prevailing rate of wages and fringes can be obtained at website <http://www.access.gpo.gov/davisbacon>).

If the General Wage Decision fails to provide for a fringe benefit rate for any worker classification, then the fringe benefit rate applicable to such worker classification shall be the fringe benefit rate that has a basic wage rate closest in dollar amount to the Work classification for which no fringe benefit rate has been provided.

B. Upon commencement of Work, the DESIGN BUILDER and all of his/her sub-

Commented [DG1]: I have not capitalized "contract" because it was not capitalized throughout this Exhibit C.

## EXHIBIT C

DESIGN BUILDERS shall post a notice in a prominent place at the Work site stating the requirements of this Article.

- C. As per the City of Hollywood Code of Ordinances, Prevailing Wage Requirements and Fringe Benefits are applicable to the following: (A) Utilities projects over \$1,000,000.00, and (B) all other projects over \$500,000.00.

### 10. INSPECTIONS AND TESTING DURING OVERTIME

- A. The following supplements Article 3.15 and 3.16 of the General Conditions:

For weekend Work, DESIGN BUILDER shall submit a written request to the CITY by the preceding Wednesday. A separate request is required for each week that the DESIGN BUILDER desires to Work on a weekend. For evening and holiday Work, DESIGN BUILDER shall submit a written request to the CITY three days in advance. The CITY will provide inspection services for all overtime Work and the DESIGN BUILDER shall pay for inspection services per Article 3.15, no exceptions.

Similarly, holiday and other overtime Work shall be requested a minimum of 36 hours in advance, and CITY will provide inspection for all overtime.

- B. Exceptions to the hours and days of the week for Work and other related limitations are allowed only for tie-ins during low flow periods/early morning hours, coatings that need to be applied during lower temperature times of the day, and whenever the Documents specifically define that Work shall be completed outside of the limitations for "normal" work hours, days, etc.

Inspection for tie-ins during low flow/early morning and specialty coating application performed during nighttime will not be cause for extra inspection costs unless such Work is remedial in nature as a result of defective Work.

### 11. RETAINAGE

CITY shall promptly make payment to DESIGN BUILDER, unless CITY has grounds for withholding the payment of retainage. CITY shall have grounds for withholding the payment of retainage with respect to any amounts that are the subject of a good-faith dispute, the subject of a claim brought pursuant to Florida Statutes Section 255.05, or otherwise the subject of a claim or demand by CITY or DESIGN BUILDER.

At acceptance of Substantial Completion, CITY shall promptly make payment to DESIGN BUILDER of one-half of the retainage then held by CITY. At acceptance of completion of all punch list items, CITY shall promptly make payment to DESIGN BUILDER of the balance of retainage then held by CITY.

### 12. OWNER'S CONTINGENCY (NOT USED)

### 13. SRF FUNDING REQUIREMENTS (NOT USED)

EXHIBIT C

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**PROJECT: HOLLYWOOD BOULEVARD / 26TH AVENUE MAST ARMS REPLACEMENT  
ENGINEER/DESIGN BUILDER :**

**TO:**

**DESIGN BUILDER:**

**NOTICE TO PROCEED DATE:**

**DATE OF ISSUANCE:**

**PROJECT OR DESIGNATED PORTION SHALL INCLUDE:**

Portions of the Work performed under this Contract as described above have been reviewed and found to be substantially complete. The Date of Substantial Completion of Project or designated portion thereof designated above is hereby established as also the date of commencement of applicable warranties as required by the Contract Documents for the noted area.

**DEFINITION OF DATE OF SUBSTANTIAL COMPLETION**

The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the ENGINEER and PROJECT MANAGER ("Date of Issuance" above) when construction is sufficiently complete in accordance with the Contract Documents so the CITY can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the Contract Documents.

A list of items to be completed or corrected, prepared by the DESIGN BUILDER and verified and amended by the ENGINEER and PROJECT MANAGER, for the above referenced "Project or Designated Portion" is attached to this form (attached "Punch List" dated \_\_\_\_\_).

The failure to include any items on such list does not alter the responsibility of the DESIGN BUILDER to complete all Work in accordance with the Contract Documents.

Please note that in accordance with Article 14 General Conditions, the DESIGN BUILDER retains full responsibility for the satisfactory completion of all Work regardless of whether the Owner occupies and / or operates a part of the facility, and that the taking possession and use of such Work shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

\_\_\_\_\_  
ENGINEER BY DATE

\_\_\_\_\_  
DESIGN BUILDER BY DATE

The CITY OF HOLLYWOOD, through the CITY'S authorized representative, accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at \_\_\_\_\_ (time) on \_\_\_\_\_ (date).

\_\_\_\_\_  
BY DATE

- END OF SECTION -