CITY OF GRANTS PASS
COUNCIL AGENDA
November 28, 2016
11:45 a.m. City Council Workshop and
Special Meeting
Council Chambers - 101 N.W. "A" Street

MAYOR: Darin Fowler

CITY COUNCIL MEMBERS:

Ward 1	***Ward 2***	***Ward 3***	***Ward 4***
Dan DeYoung	Valerie Lovelace	Ken Hannum	Vacant
Roy Lindsay	Rick Riker	Dennis Roler	Vacant

1. COUNCIL WORKSHOP:

   a. Renewal of travel/tourism contract
   b. Agenda review
   c. Fire District Feasibility Study

2. CONVENE THE SPECIAL COUNCIL MEETING:

   a. Resolution authorizing the City Manager to enter into an agreement with CH2M for Water Restoration Plant Design Build Upgrade Project SE4964.

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate person with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations at least 48 business hours prior to the meeting. To request these arrangements, please contact Karen Frerk, City Recorder at (541) 450.6000.

Item: Resolution authorizing the City Manager to enter into an agreement with CH2M for Water Restoration Plant Design Build Upgrade Project SE4964.

Date: November 28, 2016

SUBJECT AND SUMMARY:

Consider a resolution authorizing the City Manager to enter into an agreement with CH2M for the upgrade of the Water Restoration Plant (WRP); Project SE4964.

RELATIONSHIP TO COUNCIL GOALS:

This supports the Council's goal of maintain, operate and expand our **INFRASTRUCTURE** to meet community needs by upgrading our WRP in a fiscally sound, efficient, and regulatory compliant manner.

CALL TO ACTION SCHEDULE:

Upgrade of the WRP is using a design build alternative delivery process. Execution of the agreement with CH2M initiates the WRP upgrade. Call to action schedule: November 28, 2016.

BACKGROUND:

The Strategic Plan for Water and Wastewater Utility Programs dated October 2015 cited as a 'Critical Recommendation' the use of Design/Build procurement alternative for the WRP expansion. After an evaluation of legal requirements and the Design/Build process, it was determined the best alternative delivery method for the WRP expansion would be to use a Progressive Design Build (PDB) approach.

The PDB delivery will be completed in 2 phases. In Phase 1 a PDB Contractor will be selected for the initial design (to approximately 60%), and development of the cost to complete the final design and construct the improvements. If the terms, conditions and cost are acceptable to the City, the PDB Contractor will complete the final design, permitting and construction of the upgrade in Phase 2.

Legal findings to support the PDB process were adopted on September 7, 2016. A Request for Proposal (RFP) for the WRP upgrade was published on September 8, 2016. In response to the RFP, four PDB firms submitted proposals on October 5, 2016. A review team consisting of Staff, City Engineer and Josephine County Public Works Director evaluated and scored the proposals. All four PDB firms were interviewed on October 27, 2016. The PDB firm of CH2M was selected as the best firm for the WRP upgrade project.

Staff Report (continued):

The fee for phase 1 services of the WRP upgrade has been negotiated with CH2M and is incorporated in Exhibit 'A' which is attached.

COST IMPLICATION:

Revenue Source: The maximum fee for Phase 1 services for the WRP upgrade is $1,937,048 and is available within the Wastewater Capital Fund within Project SE4964.

ALTERNATIVES:

1. Council can approve the resolution authorizing the City Manager to enter into an agreement with CH2M for WRP upgrade project SE4964.
2. Council could decide not to approve the resolution and direct staff to work with CH2M to revise the agreement.
3. Council could decide not to use an alternative delivery process for the WRP upgrade.

RECOMMENDED ACTION:

It is recommended that Council approve the resolution authorizing the City Manager to enter into an agreement with CH2M.

POTENTIAL MOTION:

I move to adopt the resolution authorizing the City Manager to enter into an agreement with CH2M for Water Restoration Plant Upgrade Project SE4964.

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF GRANTS PASS AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CH2M FOR WATER RESTORATION PLANT DESIGN BUILD UPGRADE PROJECT SE4964.

WHEREAS:

1. The Strategic Plan for Water and Wastewater Utility Programs dated October 2015 cited a critical recommendation of using a Design/Build procurement alternative for the Water Restoration Plant upgrade; and

2. The City conducted a qualification based selection process for a Progressive Design Build firm; and

3. The City has negotiated a fee with CH2M to provide Phase 1 services for a Progressive Design Build procurement alternative for the SE4964 upgrade of the Water Restoration Plant; and

4. The City of Grants Pass has sufficient funds for Phase 1 services currently within the Wastewater Capital Fund.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Grants Pass that the City Manager is authorized to enter into an agreement with CH2M for the Phase 1 services as described in the Design Build Agreement, which is attached to and incorporated herein as Exhibit 'A'.

EFFECTIVE DATE of this Resolution shall be immediate upon the passage by the City Council and approval by the Mayor.

ADOPTED by the Council of the City of Grants Pass, Oregon, in regular session this 28th day of November 2016.

SUBMITTED to and _____ by the Mayor of the City of Grants Pass, Oregon, this ____ day of November 2016.

_____
Darin Fowler, Mayor

ATTEST:

_____
Karen Frerk, City Recorder

Date submitted to Mayor: _____

Approved as to form Mark Bartholomew, City Attorney_____

Exhibit A

DESIGN-BUILD AGREEMENT
FOR THE
WATER RESTORATION PLANT, PHASE 2 UPGRADE PROJECT

This **AGREEMENT** is made effective as of _____, 2016, by and between the following parties, for services in connection with the Project identified below:

OWNER:

City of Grants Pass, Oregon
101 NW A Street
Grants Pass, OR 97526

DESIGN-BUILDER:

CH2M Hill Engineers, Inc.
2020 SW 4th Ave., 3rd Floor
Portland, OR 97201

PROJECT:

Water Restoration Plant, Phase 2 Upgrade Project
1200 SW Greenwood Avenue
Grants Pass, Oregon 97526

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder now agree as follows:

Article 1.0 Scope of Work

1.1 Phased Delivery. Owner and Design-Builder will implement the Project on a phased basis.

1.2 Phase 1: Study and Technical Exhibit Phase Services. Owner has selected Design-Builder on the basis of Design-Builder's proposal for the performance of design, pricing, and other services for the Project during Phase 1. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 1, *Phase 1*, of Attachment B, *Compensation*. The level of completion required for Phase 1 Services is defined in Attachment A, *Scope of Work* (either as a percentage of design completion or by defined deliverables).

1.3 Phase 2: Design-Build Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the project components, and the provision of warranty services, all as further described in Attachment A, *Scope of Work*. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may (a) accept the Contract Price and issue a Notice to Proceed with Phase 2 services, or (b) enter into a negotiation with Design-Builder on the scope and Contract Price, and, if required, on the schedule, for Phase 2 services to achieve a mutually acceptable basis on which to proceed, or (c) reject Design-Builder's proposal for Phase 2 and either (i) cancel the Project, (ii) proceed with another Design-Builder, or (iii) exercise the "off-ramp" final

design provisions of Section 1.4, *Off-Ramp*. The Contract Price for Phase 2 Services will be set forth in Section 2, *Phase 2*, of Attachment B, *Compensation*, when mutually agreed between the parties. Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 services, all as further described in Attachment A, *Scope of Work*, as it may be revised.

1.4 Off-Ramp

1.4.1 The parties acknowledge that Owner's ability to successfully complete the Project may be significantly impacted if Owner elects to terminate Design-Builder's services at the end of Phase 1, rather than proceeding to Phase 2 under Section 1.3 ("Phase 2 Services") and certain design subconsultants are not available to continue working on the Project. Consequently, Design-Builder hereby agrees that if Owner terminates Design-Builder for any reason, Owner shall have the right to contract directly with such design subconsultants for design-related services on this Project, and Design-Builder shall take such steps as are reasonably necessary to enable Owner to implement such relationship. Design-Builder shall provide in any design subconsultancy agreements that Owner shall have the right to negotiate directly with such design subconsultants for the continuation of their services with respect to the Project, and that any provisions with respect to copyright or the ownership of instruments of service confirm such right of Owner.

1.4.2 If the parties are unable to reach an agreement on Design-Builder's proposed Contract Price for Phase 2 under Section 1.3 within the time limit for acceptance specified in the Proposal, as may be extended by the mutual agreement of the parties, then the proposed Contract Price shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

1. Owner may declare Phase 1 Services completed and authorize Design-Builder to continue to advance the final design of the Project as an extension of Phase 1 or as an Additional Service, as applicable; or
2. Owner may terminate the relationship with Design-Builder and proceed to exercise its available options to perform the final design and construction with parties other than Design-Builder.

1.4.3 If Owner fails to exercise either of its options under Section 1.4.2 in a reasonable period of time, Design-Builder may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise either of the options under Section 1.4.2 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed.

1.4.4 If Owner terminates the relationship with Design-Builder under Section 1.4.2.2, or if this Agreement is deemed completed under Section 1.4.3, then Design-Builder shall have no further liability or obligations to Owner under this Agreement

1.5 Completion. Once Design-Builder has received a Notice to Proceed with Phase 2, Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, labor, manuals, start-up, commissioning and testing services for the Project necessary to complete the Work described in and reasonably inferable from the Contract Documents, including Section 2 of Attachment A (Scope of Work). A requirement of Substantial Completion of the Work is that Design-Builder shall conduct performance tests to demonstrate that the Facility Performance Criteria have been met.

Article 2.0 Contract Documents

2.1 Contract Documents. The Contract Documents are comprised of the following:

1. All written modifications, amendments and change orders to this Agreement issued in accordance with Attachment D, *General Conditions*;
2. Written Supplementary Conditions, if any, to the General Conditions;

3. The General Conditions set forth as Attachment D to this Agreement;
4. This Agreement, including all exhibits and attachments;
5. Construction Documents prepared and reviewed in accordance with GC 2.4;

Article 3.0 Interpretation and Intent

3.1 Contract Documents. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Phase 1 Compensation and the agreed Contract Price for Phase 2 Services. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof, except that with respect to the attachments to this Agreement, Attachment F shall take precedence over the other attachments.

3.2 Meanings. Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in GC 1.2.

3.3 Entire Agreement. The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein in their entirety. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4.0 Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

4.2 Owner's Limited License upon Payment in Full. Upon Owner's payment in full for the Work performed in each Phase under the Contract Documents, Design-Builder shall be deemed to have granted Owner a limited license to use the Work Product solely in connection with Owner's ownership, use, and occupancy of the Project. Design-Builder shall include such grant of license to use of Work Product in all design subconsultant agreements. Owner shall not use the Work Product on any other project or facility without Design-Builder's express written consent.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates the Project for its convenience as set forth in Article 8.0 ("Termination for Convenience"), or if Design-Builder elects to terminate this Agreement in accordance with GC 9.5 ("Design-Builder's Right to Terminate for Cause"), Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, be deemed to have granted Owner a limited license to use the Work Product to complete the Project and subsequently use and occupy the Project, conditioned on the following:

1. Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working for or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties").
2. If Owner elects the "off ramp" option provided in Section 1.4 of this Agreement and retains any of the Design-Builder's design subconsultants, then the risk, liability and legal exposure with respect to Work Product shall be as set forth in the agreement or agreements between Owner and such design subconsultant or subconsultants.

4.4 **Owner's Limited License upon Design-Builder's Default**. If this Agreement is terminated due to Design-Builder's default pursuant to GC 9.3 ("Owner's Right to Perform and Terminate for Cause") and (i) it is determined that Design-Builder was in default, and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, then Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's completion, use and occupancy of the Project. This limited license is conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

4.5 **Owner's Indemnification for Use of Work Product**. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product under Sections 4.3 or 4.4 in whole or in part, Owner agrees to defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from Owner's use of the Work Product, to the fullest extent permitted by applicable law.

Article 5.0 Contract Time

5.1 **Dates of Commencement.**

5.1.1 Design-Builder's Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Phase 1 Notice to Proceed unless the parties mutually agree otherwise in writing. The parties shall use their best efforts to complete the Phase 1 Services within *one hundred ninety five (195)* days following Owner's Phase 1 Notice to Proceed.

5.1.2 The Phase 2 Services shall commence on the date within five (5) days of Design-Builder's receipt of Owner's Phase 2 Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 **Substantial Completion and Final Completion**

5.2.1 Substantial Completion of the entire Work shall be achieved no later than *four hundred fifty three (453)* calendar days after the Date of Commencement for Phase 2 Services ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved in accordance with Attachment C, *Schedule*.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved within *sixty (60) days* after Substantial Completion.

5.2.4 All of the dates set forth in this Article 5.0 shall be subject to adjustment in accordance with the General Conditions.

5.3 **Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Owner agrees to provide all site access, materials, information, data, and approvals required under the Contract Documents in a timely manner, as required for Design-Builder to achieve the interim milestones of the Schedule and the Scheduled Substantial Completion Date.

5.4 **Liquidated Damages**. Design-Builder understands that if Substantial Completion is not achieved by the Scheduled Substantial Completion Date (as it may be extended hereunder), Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not achieved by the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Fifteen Hundred Dollars ($1,500) as liquidated damages for each day that Substantial Completion extends beyond the LD Date, for up to 180 days.

The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.

No Liquidated Damages shall be assessed in the event that Owner takes early beneficial occupancy of the Facility or makes partial use thereof for operating or commercial purposes before Substantial Completion is achieved.

Article 6.0 Compensation and Contract Price

6.1 Phase 1 Compensation. For the Phase 1 Services, Owner shall pay Design-Builder compensation in accordance with Section 1, Phase 1, of Attachment B, Compensation.

6.2 Phase 2 Contract Price. For the Phase 2 Services, Owner shall pay Design-Builder in accordance with Section 2, Phase 2, of Attachment B, Compensation, an agreed Contract Price, subject to adjustments made in accordance with the General Conditions.

Article 7.0 Procedure for Payment

7.1 Payment for Phase 1 Services

7.1.1 Owner shall compensate Design-Builder monthly for Phase 1 Services performed under the Agreement for the work performed during the monthly period up to and not exceeding the compensation limit set forth in Section 1, Phase 1, of Attachment B, Compensation.

7.1.2 Owner shall pay Design-Builder for Phase 1 Services within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the provisions of GC 5.1 ("Payment for Phase 1 Services") and 5.4 ("Withholding of Payments").

7.2 Progress Payments for Phase 2 Services

7.2.1 Design-Builder shall submit to Owner on or before the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with GC 5.3 ("Monthly Progress Payments for Phase 2 Services").

7.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with GC 5.3, but in each case less the total of payments previously made, and less any amounts properly withheld under GC 5.4 ("Withholding of Payments") and Section 7.3 below ("Retainage on Progress Payments").

7.2.3 If Design-Builder's Fee is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments

7.3.1 Owner will retain ten percent (10%) of each Phase 2 Application for Payment *provided, however*, that when fifty percent (50%) of the Work has been completed by Design-Builder, and if the Work is proceeding satisfactorily, then Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.3.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to GC 5.7 ("Substantial Completion"), Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion or other withholdings pursuant to GC 5.4.

7.4 **Final Payment**. Design-Builder shall submit its Final Application for Payment to Owner in accordance with GC 5.8 ("Final Payment"). Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in GC 5.8.2.

7.5 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear daily interest commencing five (5) days after payment is due at the rate equivalent to two percent (2%) per annum, or the maximum rate permitted by applicable law, whichever is less, which Owner shall pay upon presentation of an invoice therefor.

7.6 **Record Keeping and Financial Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work, including the development and agreement upon the Contract Price for Phase 2 Services; provided that if Owner and Design-Builder convert to or agree to a lump sum form of compensation for the Phase 2 Contract Price ("Fixed Contract Price"), then the provisions of this Section 7.6 shall not apply to such Fixed Contract Price and any adjustments made on a lump sum basis. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and in such accounts as may be necessary for Owner's utility accounting purposes. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment, *provided, however,* that such access, review, and audit rights shall not extend to any compensation amounts established on the basis of fixed rates for overhead or fee, or an agreed fixed sum, or unit rates for any element of cost.

Article 8.0 Representatives of the Parties

8.1 Owner's Representatives

8.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under GC 8.2.3:

Jason M. Canady
Public Works Director
City of Grants Pass
101 NW A Street
Grants Pass, OR 97526
(541) 450-6110

8.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in GC 3.4 ("Owner's Representative"):

Jason M. Canady
Public Works Director
City of Grants Pass
101 NW A Street
Grants Pass, OR 97526
(541) 450-6110

8.2 Design-Builder's Representatives

8.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under GC 8.2.3:

Joe Glicker
Vice President
2020 SW 4th Ave., 3rd Floor
Portland, OR 97201
503-736-4378

8.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in GC 2.1.1:

Michelle Burkhart
Vice President
2020 SW 4th Ave., 3rd Floor
Portland, OR 97201
503-736-4378

Article 9.0 Indemnity, Insurance, and Bonds

9.1 **Indemnity**. Indemnification obligations between the parties shall be as set forth in Article 4.0, above, and in Section 1.0, *Indemnity,* of Attachment E, *Indemnity, and Insurance & Bonding.*

9.2 **Insurance**. The parties shall procure the insurance coverages set forth in Attachment E, *Indemnity, Insurance & Bonding*, in accordance with the General Conditions.

9.3 **Bonds and Other Performance Security.** If so required, Design-Builder shall provide a performance bond and labor and material payment bond or other performance security in accordance with Section 8.0, *Bonds*, of Attachment E, *Indemnity, and Insurance & Bonding.*

Article 10.0 Other Provisions

10.1 Other provisions, if any, are as follows: None.

Article 11.0 Limitations of Liability

11.1 **Aggregate Limitation of Liability.** Except for indemnification for third party claims against Owner and to the fullest extent permitted by law, Design-Builder's liability for Owner's damages (including any liquidated damages hereunder) for any cause or combination of causes, whether based upon contract, tort, breach, warranty, negligence, strict liability, or otherwise, will, in the aggregate, not exceed the Contract Price.

11.2 **Time Limitation.** Any cause of action, suit, proceeding, demand or other claim, shall be deemed waived unless made by Owner in writing and received by Design-Builder within time limitations set forth in applicable law.

11.3 **Consequential Damages.** In no event shall Design-Builder or any of its Subcontractors be liable for any incidental, indirect, special, punitive, or consequential damages, (including but not limited to loss of use, loss of capacity, loss of revenue, loss of profits, or cost of replacement product or capacity) suffered or incurred by Owner or any of its agents, including other contractors engaged by Owner at the Site, as a result of this Agreement or Design-Builder's performance or non-performance of the Work. In no event shall Owner be liable for any incidental, indirect, special, punitive, economic or consequential damages, (including but not limited to loss of profits)

suffered or incurred by Design-Builder as a result of this Agreement or Design-Builder's performance or non-performance of the Work.

11.4 **Full Effect.** All waivers of and limitations of liability contained in this Agreement shall apply whether such liability is claimed to arise in contract, tort (including but not limited to negligence), breach of warranty, breach of contract, strict liability, or otherwise. This General Condition 2.12 takes precedence over any conflicting article or provision of this Agreement or any document incorporated into it or referred to by it.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, arid each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

City of Grants Pass, State of Oregon
(Name of Owner)

_____
(Signature)
Jason M. Canady
Public Works Director

_____
(Signature)
Aaron K. Cubic
City Manager

*Attested:*_____
Karen Frerk
City Recorder

Date: _____

*Approved as to Form:*_____
Mark Bartholomew, City Attorney

DESIGN-BUILDER:

CH2M Hill Engineers, Inc.
(Name of Design-Builder)

_____
(Signature)

_____
(Printed Name)

_____
(Title)

ATTACHMENT A

SCOPE OF WORK

SECTION 1 PHASE 1

ARTICLE 1 – REQUIRED SERVICES

General Items:

Design-Builder Submittals:

1. For each draft submittal:
   a. Provide one (1) printed copy to City and one (1) printed copy to Owner's Representative for record purposes and an electronic copy in Adobe PDF format saved to the Microsoft SharePoint site (see article 1.02 G Project Management Information System). Provide notice to Owner's Representative when documents are submitted for review.
   b. City and Owner's Representative will review draft submittals. Owner's Representative will consolidate review comments from City staff and Owner's Representative staff and provide comments to the Design-Builder via a Quality Review Form (QRF), which will be in electronic Excel Workbook format, saved to the Microsoft SharePoint site. City will provide review comments within seven (7) calendar days of receiving deliverables.
   c. Review comments and record responses and/or actions required to resolve items on the QRF within seven (7) calendar days of receiving comments. Comments requiring further discussion or work to resolve shall be brought to the attention of the Owner's Representative.

2. Final Submittals: Provide six (6) printed copies and an electronic copy in Adobe PDF format saved to the Microsoft SharePoint site. Distribute four (4) printed copies to Owner and two (2) printed copies to Owner's Representative.

3. Permit Submittals: Provide submittals for Oregon Department of Environmental Quality (DEQ) and Building Department reviews as required by agencies. Provide one (1) printed copy to City and one (1) printed copy to Owner's Representative of each submittal for record purposes an electronic copy in Adobe PDF format saved to the Microsoft SharePoint site. Provide draft and final submittals.

Document Formats, Design-Builder shall provide documents to City in:

1. Reports and documents - Microsoft Word version 2013 and Adobe Acrobat 9 formats. Documents with electronic Professional Engineer seals and signatures shall be submitted in Adobe PDF format (may be generated via Bluebeam and saved to Adobe PDF).

2. Drawings – Interim deliverables shall be submitted in Adobe PDF format. Final record drawings shall be submitted in AutoCAD format, version 16(or version acceptable to City).

Meetings and Workshops, Design-Builder shall:

1. Schedule meetings with City and Owner's Representative a minimum of two weeks in advance.

2. Provide agenda and materials for the meetings to attendees a minimum of one week in advance.

3. Facilitate meetings and workshops at City facilities or at location acceptable to the City.

4. Record meeting notes, distribute in draft form for review and comment by attendees, and distribute final meeting notes via saving to the Microsoft SharePoint site.

Design Builder's Primary Points of Contact:

1. Information and Data Requests: Owner's Representative; Owner's Representative will coordinate with City staff as required and post information to the Microsoft SharePoint site.

2. Technical Information and Clarifications; Owner's Representative; Owner's Representative will coordinate with City staff as required and provide a consolidated response to Design-Builder.

3. Project Management, Applications for Payment, Progress Reporting: City.

1.01 Project Initiation

A. The Design-Builder shall perform the following services through an early notice to proceed issued by Owner:

1. Prepare a draft Project Execution Plan and Procedures Manual summarizing the Phase 1 Study and Technical Exhibit Phase Services (Technical Exhibit Phase) project goals and objective; the Design-Builder project approach; project organization requirements defining resources/staffing plan, responsibilities, contacts, and communication plan; Design-Builder's quality assurance/quality control (QA/QC) plan; project budget, schedule and work breakdown structure; financial tracking procedures; and scope change management process. The project delivery schedule shall be in coordination with City's requirements, and milestone dates. Submit for review within 14 calendar days following written authorization to proceed.

2. Schedule and facilitate a Project Kickoff Meeting with City and Owner's Representative within 21 calendar days following written authorization to proceed. At the meeting review the draft Project Execution Plan and Procedures Manual and discuss Project goals, objectives, and critical success factors. Prepare agenda and submit to City no later than 7 calendar days before meeting (with draft Project Execution Plan).

3. Respond to review comments in the QRF, revise the draft Project Execution Plan and Procedures Manual based on the comments received, and submit a final version within 14 calendar days after receipt of review comments.

1.02 Project Coordination and Management

A. Design-Builder shall provide Project coordination and management for the activities performed during the Technical Exhibit Phase Services of the Work. This includes management and monitoring of labor utilization, project schedule, and project budget on a regular basis. It shall be the ongoing responsibility of the Design-Builder to adequately manage and adhere to the task budgets and to submit deliverables to the City on time and in accordance with the contract requirements.

B. Monthly Progress Reports. Design-Builder shall prepare and submit monthly progress reports with applications for payment for the Work completed during the prior pay period and compare earned value to actual expenditures for the month and project duration. Progress reports shall include an updated schedule, as appropriate, and trend register(s) and will be reviewed by the City and City's Owner Representative during monthly progress meetings. The status reports will also identify or forecast proposed modifications to the project scope. Key issues requiring City action or direction will also be included.

Monthly progress reports shall be submitted to the City on or before the 1st of each month. A monthly meeting to review the progress report shall be conducted with City and Owner's Representative via teleconference.

C. Scope Management. During preparation of the BDR, Design Builder will document decisions in meeting notes. Subsequent to establishing the Baseline Project Scope and Project Cost in the BDR, Design-Builder will document changes to project scope and cost on a continuous basis. The Design-Builder will maintain a Scope Log. This online tool will track all potential scope change items, identify the options for resolving the change and estimate the cost and schedule impact associated with adopting the change. Items will be reviewed with the City on a regular basis during design (at a minimum of every other week). The City has sole right to select its preference to address each change; Design-Builder shall proceed with the design according to the direction provided by the City.

D. Quality Management. Design-Builder shall perform in-progress quality management reviews to ensure the project objectives are realized. At a minimum, the Design-Builder shall following:

1. Designate a quality assurance/quality control (QA/QC) officer to the Technical Exhibit Phase Services that is responsible for implementation of the QA/QC plan, and documentation of QA/QC activities.

2. Utilize Design-Builder's standard protocol for performance of the Technical Exhibit Phase Services.

3. Require all Design-Builder Project personnel to read the approved Project Execution Plan and be familiar with the Project procedures and requirements.

4. Perform internal review of all calculations and deliverables by designated quality management personnel approved by the City. This review will occur concurrently with City review.

5. Submit certification by the Project Manager that deliverables have been reviewed and checked in accordance with the procedures documented.

6. Design-Builder shall perform an independent quality control check of the reports, Basis of Design Report, Drawings, and Specifications to assure the Design-Build Documents are clear and complete and to assure functional coordination of the varied systems and components, consistent with its standard procedures. This review shall be by an individual who has not had a role in the development of the Design-Build Documents to assure a "fresh eyes" review. The quality control check shall be comprehensive and shall include at a minimum checking dimensions, sizes, detail, section, and elevation references, coordination between the architectural and engineering disciplines' Drawings and Specifications, reviewing designs for compatibility of Materials and Equipment, coordinating references within technical Specifications to other sections and to the Drawings, constructability, and future maintenance access.

7. Owner's Representative will perform a separate peer review on behalf of the City. Design-Builder shall supply calculations, analyses, and other documents needed for Owner's Representative review and cooperate fully with the peer reviewers. It is anticipated these include process, hydraulic, and structural calculations for review by the City for compliance with design criteria.

E. Schedule Management. Design-Builder shall prepare a baseline Design Schedule through an early notice to proceed issued by Owner and provide updates to the Design Schedule and other Project schedules according to the following:

1. All schedules shall be prepared using Primavera P6 scheduling software (latest version). The Design-Builder shall follow its standard 'Activity ID' format approved by the Owner's Representative.

2. Schedules shall be submitted as electronic files (native and Adobe Acrobat PDF format) and hardcopy and shall be updated monthly to show progress.

3. Prepare baseline Design Schedule within 21 days of the Notice to Proceed for the Design-Build Agreement. Schedule includes a detailed schedule for Technical Exhibit Phase Services activities and also summarizes activities for the Phase 2 Design-Build Phase Services including any agreed upon early work packages. The City shall provide written approval of Milestone Dates in the Design Schedule. The Design Schedule shall be based upon the schedule submitted with the Design-Builder's proposal, and shall include at a minimum:

   i. Start date for each activity;
   ii. Finish date for each activity;
   iii. Major milestones;
   iv. Meeting and workshop dates;
   v. Submittal dates including draft submission dates, City/Owner's Representative review periods, and final submission dates;
   vi. Identification of critical path; and
   vii. Float.

4. The Design Schedule shall show the activities of the City, Owner's Representative, Design Professional, Subconsultants, Design-Builder, and key Subcontractors necessary to meet City's Technical Exhibit Phase completion requirements.
5. The baseline Design Schedule shall be submitted at the kick-off meeting. It shall subsequently be reviewed and analyzed by the City and City's Owner Representative. Design-Builder shall discuss with the City and City's Owner Representative any review comments and shall provide revised baseline schedule based on agreed-to changes.
6. Schedule updates shall be updated periodically (at least monthly) and shall be submitted with each Cost Estimate submittal with the level of detail for each update reflecting the information then available. If an update indicates a previously submitted Design Schedule will not be met, Design-Builder shall provide a corrective recovery plan of action to City in writing.

F. Risk Management. The Design-Builder shall incorporate risk management into the Project in accordance with the requirements of the Agreement. Design-Builder shall prepare and provide updates to a risk register according to the following:

1. Develop and maintain a risk register using a risk register template approved by the Owner's Representative.
2. The risk register shall include the following information, at minimum:

   i. Risk identification;
   ii. Activity or activities affected (tied to schedule activities);
   iii. Risk description including qualitative categorization of risk;
   iv. Estimated/calculated percent likelihood that risk may occur;
   v. Phase of Project that risk could impact;

vi. Potential schedule impact should risk occur;
vii. Potential cost impact should risk occur;
viii. Potential health & safety impacts should risk occur;
ix. Risk trigger;
x. Risk owner; and
xi. Risk management strategy (transfer, mitigate, accept, exploit).

3. Update risk register and submit as part of monthly progress reports.

G. Work Management System.

1. Document Management. Design-Builder will maintain and coordinate all pertinent electronic design files and documents including all Computer-Aided Design and Drafting (CADD)-related files related to the Project. Electronic files submitted during the Study and Technical Exhibit Phase shall use a naming convention approved by the City and described in the Project management plan.
2. Project Management Information System. A web-based project management information system (PMIS) using the Design-Builder's standard PIMS will be used to facilitate collaboration and management of the Project during both Phases of the work. The Design-Builder will be required to use the PMIS and follow established procedures and workflows for documenting, sharing, and control of Project information. At a minimum, the PMIS will be used for the following:

i. Overall Project tracking and monitoring of key performance indicators;
ii. Meeting and workshops agendas, presentations, and notes;
iii. Action items, issues, decision logs, and tracking;
iv. Budget and schedule tracking;
v. Risk tracking and mitigation;
vi. Document submittals and transmittals including drawings (pdf format);
vii. Quality management documentation including comments, responses, and confirmations;
viii. Value engineering submissions;
ix. Applications for Payment and monthly reports;
x. Templates and tools;
xi. Project related communication; and
xii. Dashboards of Project progress prepared by the City.

3. The Design-Builder will secure the required number of PIMS user licenses for City for the scheduled duration of the Technical Exhibit Phase.

1.03 Technical Exhibit Phase Services

A. The Design-Builder shall:

1. Review the Project Requirements and consult with City and Owner's Representative as appropriate to further clarify requirements for the Project including City's budget, review of Project Design Criteria Requirements, and available City-Furnished Information.

2. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Design-Builder, including but not limited to DEQ and building permits.

3. Evaluate the Project Reference Documents, including but not limited to the Design Criteria Requirements, and, after consultation with City, recommend to City any modifications to such documents which in Design-Builder's judgment would benefit the Project.

4. Within 42 calendar days (6 weeks) of the written authorization to proceed complete a cost-benefit analysis that compares locating the required new electrical equipment and new blowers in the existing Administration Building to locating the required new electrical equipment and new blowers in a new building or buildings:

i. The analysis shall include site layout for the new building(s) and layout of equipment within the existing Administration Building; analysis of retrofit costs of the Administration Building spaces; construction staging/work sequencing analysis; capital costs, including all temporary costs to execute the construction staging/work sequencing plan; and a recommendation of the alternative that provides best value to the City.
ii. Summarize the cost-benefit analysis and submit for review.
iii. Schedule and facilitate a meeting with the City and Owner's Representative to present findings of the analysis.
iv. Respond to City and Owner's Representative review comments.
v. Incorporate evaluation, including comments into the BDR.
vi. The City has sole right to select its preferred alternative; Design-Builder shall proceed under Phase 1 according to the alternative selected by the City.

5. Within 56 calendar days (8 weeks) of the written authorization to proceed submit a draft Basis of Design Report (BDR):

i. The BDR shall serve to revise and update to the Design Criteria Requirements and shall, as appropriate, contain schematic layouts, sketches and conceptual design criteria, and appropriate exhibits; and indicate the applicable requirements, considerations involved, and recommended alternate solutions. This Basis of Design Report shall include descriptions of any deviations from City's Design Criteria Requirements.
ii. The BDR shall also include:
    a. Design-Builders approach to the SCADA system upgrade, including proposed procurement method for hardware and software and proposed sequencing for implementation.
    b. Topographic survey of the entire WRP site. Perform topographic survey of WWTP site, including utility location service and potholing, and strategic hydraulic control points and certain structure heights. Establish permanent control points and resolve and include the property boundary on the basemap.
    c. Preliminary geotechnical information from data reviews.
    b. Design-Builder's estimate of Design-Build Cost for the Basis of Design (initial cost model). The cost model shall be based on a detailed labor and material type cost estimate for the Design-Build Cost, consistent with Association for the Advancement of Cost Engineering (AACE) practices. The cost model shall be organized by CSI division listing all materials, equipment, and systems necessary to construct the facilities.
    c. Design-Builder's updated Project schedule through startup.
i. For the BDR submittal, Design-Builder shall: submit the draft report for review; schedule and facilitate a one-day review meeting with City and Owner's Representative to present the BDR and an overview of the initial cost model and Project schedule; respond to City and Owner's Representative review comments; and submit a final BDR.

1.04 Value Engineering Review

Design-Builder, City, and City's Owner Representative will conduct a value engineering (VE) review of the draft Basis of Design Report. The value engineering review will include the following subtasks. The City's Owner Representative (or designated representative) will lead and facilitate the VE proceedings as

described herein.

A. Provide Members of the VE Team. The Design-Builder will nominate three (3) members within their organization(s) that are not directly involved with project execution. The City will select the VE team from this list of candidates and name members of its own staff to participate.

B. Attend Initial and Final VE Sessions. The Design-Builder will attend one half-day session at the commencement of the VE workshop intended to present the Basis of Design Report concepts to the VE team. The initial session will be attended by the Design-Builder's project manager, design manager. Other Design-Builder staff (construction manager, lead estimator, lead scheduler, area lead engineers, and other key members) will participate remotely as deemed necessary. The Design-Builder's project team will be available remotely for consultation throughout the workshop. Design-Builder's project manager and design manager will attend one half-day session at the conclusion of the VE workshop intended to present the findings of the VE team to the Design-Builder team. The conclusion session will be attended by the same individuals identified for the initial session.

C. VE Workshop. The Design-Builder's VE team members will meet for a formal 2-day VE workshop during which value engineering items will be identified and alternatives investigated.

D. Assist in VE Alternatives Analysis and Report Preparation. The results of the VE analysis will be presented in a VE report prepared by the Owner's Representative. The Design-Builder, along with the City and City's Owner Representative, shall review the report and assist in evaluation of and response to each item raised by the VE team. The analysis will be discussed with the City in a follow-up workshop. Following the workshop, the final disposition of value engineering recommendations and associated cost savings will be documented by the Design-Builder for incorporation into the design accordingly.

1.05 Engineering Design Development

A. Upon authorization from City, the Design-Builder shall proceed with further development and refinement of the Technical Exhibits for the Project, including development and submittal of an intermediate design review package (up to 30% complete), final Phase 1 design review package (up to 70% compete), and early work packages.

The Technical Exhibits shall show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for Design-Builder, and shall be consistent with the Basis of Design Report, as such report may be modified throughout the development of the design. Design-Builder shall provide in writing to City descriptions of any deviations in the Technical Exhibits from the Basis of Design Report through the Scope Management effort, described in Task 1.02.

B. Design-Builder shall conduct geotechnical explorations and prepare geotechnical report for the Project. This task includes the estimated costs for all equipment, labor, and supplies necessary to drill and abandon 3 borings (each 35' +/- deep), install two 1" piezometers with flush completions, and excavate and backfill 6 to 8 test pits (up to 20' +/- deep). The borings and test pits will be directed and logged by a geotechnical engineer. Laboratory testing for soils classification, estimation of engineering parameters, and the evaluation of corrosion potential will be conducted on representative soil samples. The results of the investigation will be reported in a geotechnical data report, including a description of the site geology, seismic ground motion parameters, subsurface data from previous investigations, subsurface conditions encountered in the borings and test pits, laboratory test results, and groundwater levels.

This task also includes the cost for utility locates in advance of borings and test pits. The engineer will meet with site personnel to review existing utility information as well as potential surface conflicts, and adjust exploration locations as necessary.

Assumptions:

- The borings and test pits can be completed in five field days.
- Weather conditions will be suitable for completion of the work in December 2016 using a truck-mounted drill rig and a track-mounted excavator.
- Drill cuttings may be disposed of on site. The crew can spread the cuttings at grade surrounding each boring, or drum and move the cuttings to an onsite disposal area at the discretion of the owner. The test pits may be backfilled with excavation spoils. There will be no special handling or disposal requirements for the drill cuttings or excavation spoils.

C. The Technical Exhibits shall first be developed to a 30% completion level of the final design:

1. The 30% complete Technical Exhibits shall, as appropriate, contain supplemental site survey and geotechnical investigations, determination of the number and sequencing of construction packages; project layout and features; preliminary design of project features and facilities; design calculations; preparation of documents to support permitting; preparation of preliminary plans and specifications outline; and quality management reviews.

2. The 30% complete Technical Exhibits submittal shall include:
   i. Drawings and Specifications (as listed below in this paragraph).
   ii. Update of Design-Builder's cost model.
   iii. Update of Design-Builder's Project schedule through Project startup.
   iv. A list of any categories or proposed categories of subcontractors or suppliers that Design-Builder expects to procure during its Proposal development process.
   v. An updated letter from Design-Builder's surety or sureties verifying that Design-Builder has bonding capacity required for this Project

3. For the 30% complete Technical Exhibits submittal, Design-Builder shall: submit the documents for review; schedule and facilitate a one-day review meeting with City and Owner's Representative to present the documents and an overview of the updated cost model and Project schedule; and respond to City and Owner's Representative review comments.

4. The 30% drawings shall be developed to the following approximate levels of completion:

   Cover Sheets (90% complete).
   General Drawings:
   - List of Drawings (90% complete);

- Site plan (90% complete);
- Drawing symbols, numbering & tagging conventions, symbols, and abbreviations (90% complete);
- Hydraulic profiles (90% complete);
- Design criteria (90% complete);
- Process flow diagrams (90% complete);
- Pipe material schedule (90% complete);
- Equipment schedule (60% complete);
- Valve and gate schedules (60% complete); and
- Boundary survey (100% complete).

Civil Drawings:

- Yard piping, paving, grading, and stormwater drawings (30% complete).

Structural Drawings:

- General notes, plans, and sections (30% complete).

Architectural Drawings:

- Floor plans (90% complete); and
- Elevations (30% complete).

Mechanical Drawings:

- Plans, sections, and details (30% complete).

Plumbing, Heating, Ventilation and Air Conditioning (HVAC) and Fire Protection Drawings:

- Schedules (60% complete).

Electrical Drawings:

- Symbols, abbreviations (60% complete);
- Main switchgear single line diagram (60% complete);
- Load schedules (30% complete);
- Single line diagrams (30% complete);
- Electrical distribution site plan (30% complete);
- Project Facility electrical plans (30% complete); and
- Lighting and receptacle plans (30% complete);

Instrumentation:

- Legends and symbols (90% complete);
- Control system block diagrams/network architecture (90% complete); and
- Process and instrumentation diagrams (P&IDs) (90% complete).

5. The 30% specifications shall be developed to the following approximate levels of completion:

- Complete list of specifications.
- Identification of standard Design-Builder specifications intended for use.
- Major mechanical and electrical equipment specifications for equipment to be procured via early procurement packages.

D. After review by the City of the 30% complete Technical Exhibits Design-Builder shall take the Technical Exhibits to a completion level of 70%:

1. The 70% complete Technical Exhibits shall, as appropriate, contain final site investigations; final project layout and features; detailed design of project features; detailed drawings and specifications; design calculations (civil, electrical, mechanical, structural); and quality management reviews.

2. The 70% complete Technical Exhibits submittal shall include:
   i. Drawings and Specifications (as listed below in this paragraph).

ii. Update of Design-Builder's cost model.
iii. Update of Design-Builder's Project schedule through Project startup.
iv. A list of any categories or proposed categories of subcontractors or suppliers that Design-Builder expects to procure during its Proposal development process.
v. An updated letter from Design-Builder's surety or sureties verifying that Design-Builder has bonding capacity required for this Project

3. For the 70% complete Technical Exhibits submittal, Design-Builder shall: submit the documents for review; schedule and facilitate a one-day review meeting with City and Owner's Representative to present the documents and an overview of the updated cost model and Project schedule; and respond to City and Owner's Representative review comments. Design-Builder shall submit draft 70% documents for review by City and Owner's Representative.

4. The 70% drawings shall be developed to the following approximate levels of completion:

Cover Sheets (90% complete).
General Drawings:
- List of Drawings (100% complete);
- Site plan (100% complete);
- Drawing symbols, numbering & tagging conventions, symbols, and abbreviations (100% complete);
- Hydraulic profiles (100% complete);
- Design criteria (100% complete);
- Process flow diagrams (100% complete);
- Pipe material schedule (100% complete);
- Equipment schedule (100% complete);
- Valve and gate schedules (90% complete); and
- Boundary survey (100% complete).

Civil Drawings:
- General notes (70% complete);
- Details (70% complete); and
- Yard piping, paving, grading, and stormwater drawings (70% complete).

Structural Drawings:
- General notes (70% complete);
- Plans (70% complete); and
- Sections and details (70% complete).

Architectural Drawings:
- General notes (70% complete);
- Schedules (70% complete);
- Code review drawings (90% complete);
- Floor plans (100% complete);
- Roof plans (70% complete);
- Elevations (70% complete);
- Reflected ceiling plans (70% complete);
- Sections (70% complete); and
- Details (70% complete).

Mechanical Drawings:
- Plans (70% complete); and
- Sections and details (70% complete).

Plumbing, HVAC and Fire Protection Drawings:

- Schedules (90% complete);
- Plumbing isometric drawings (70% complete); and
- Plans & details (70% complete).

Electrical Drawings:

- General notes, symbols, abbreviations (90% complete);
- Main switchgear single line diagram (90% complete);
- Load schedules (90% complete);
- Panel schedules (90% complete);
- Single line diagrams (90% complete);
- Electrical distribution site plan (70% complete);
- Project Facility electrical plans (70% complete);
- Conduit plans (30% complete);
- Grounding plans (70% complete); and
- Lighting and receptacle plans (70% complete);

Instrumentation:

- Legends and symbols (90% complete);
- Control system block diagrams/network architecture (90% complete); and
- Process and instrumentation diagrams (P&IDs) (90% complete).

5. The 70% specifications shall be developed to the following approximate levels of completion:

- Table of contents (100%).
- Design-Builder standard specifications for procurement (100%).
- Equipment Specifications (90% complete).
- Concrete Specifications (90% complete).
- Piping and valve specifications (90% complete).
- Control narratives (90% complete).
- Balance of specifications (70% complete).

E. Project Specifications shall be prepared using Design-Builder's standard technical specifications in CSI 49-Division format. The technical Specifications shall not make any generalized blanket references to the City's Standards and Specifications, or other State or National standards. If any sections of these standards and specifications are to be included by reference, the Project technical Specifications shall cite specific chapters and/or paragraphs of the reference standards.

F. Design Element Review and Coordination Meetings (DERMs). Design-Builder shall conduct a series of design element review and coordination meetings with City and Owner's Representative staff at City's facilities. Meetings shall be conducted with small focus groups concentrating on specific areas of the Project to review the design progress of specific systems. The intent is to develop consensus on layouts, configurations, and features of various systems as the design refinement efforts progress. A total of five (5) half-day working sessions shall be included in Design-Builder's services.

G. Electrical, Instrumentation & Control, SCADA Design Element Review and Coordination Meetings. Design-Builder shall conduct a series of EI&C design and workflow coordination meetings with City and Owner's Representative staff to review control logic descriptions, P&IDs, loops, EMDs, panel layouts, general conduit and wiring, other necessary EI&C design components, and SCADA upgrades. A total of four (4) half-day working sessions shall be included in Design-Builder's services for these meetings. One meeting shall be dedicated to a discussion of specific equipment and instrumentation to be provided and one meeting dedicated to the SCADA upgrades.

H. Prior to the 70% Technical Exhibits submittal, the City and Owner's Representative will prepare Division Owner-Requirements (ORs) for review and comment by the Design-Builder. The Division ORs will document the City's general requirements, such as field support facilities, performance testing, quality control, etc. The Division ORs will become an exhibit to the amendment for the Phase 2 Design-Build Phase Services and Design-Build Agreement.

I. The Design-Builder's services under the Study and Technical Exhibits Phase will be considered complete on the date when final copies of the 70% complete Technical Exhibits (and any other deliverables) have been delivered and approved by City, and City has provided written authorization to execute the Design-Builder for Phase 2 Design-Build Phase Services.

J. To meet Project schedule requirements, development of complete design packages will be accelerated for several project components. The objective of this task is to condense the design development and construction document preparation phases for these design elements to allow for early construction. After review by the City of the 30% complete Technical Exhibits, Design-Builder shall progress the design of the following early work packages to a completion level of 100%:

- Overall site – earthwork (minor earthwork + excavation for AB/PC) + early relocation of utilities, installation of underslab utilities. Digester demo
- Concrete package for Aeration Basin and Primary Clarifiers
- Major equipment package(s): Primary Clarifier mechanism, Blowers, major electrical gear, Diffusers
- Mass Excavation package
- Vacuum truck unloading facility

1. For each early work package Technical Exhibits submittal, Design-Builder shall: submit the 50% documents for review; schedule and facilitate a one-day review meeting with City and Owner's Representative to present the documents and an overview of the updated cost model and Project schedule; and respond to City and Owner's Representative review comments. Design-Builder shall submit draft 100% documents for review by City and Owner's Representative.

1.06 Permitting Assistance

A. The Design-Builder shall:

1. Consult with City and Owner's Representative relative to applicable project permits.

2. Develop a Design-Builder Permitting Plan. The Design-Builder will hold building permits and will be expected to develop permit applications and supporting documentation in accordance with the applicable regulations. The Design-Builder Permitting Plan shall provide a list of necessary Design-Builder-led permits in which the Design-Builder will obtain the permit from the respective permitting agency. The Permitting Plan should cover activities occurring during Project execution, including a schedule for permit development, submittal, and anticipated approval. The Design-Builder Permitting Plan shall also identify permits or permitting activities that will require information, submittals, or coordination with the City and Owner's Representative. Permits that are influential to critical path elements for the delivery of the design or construction should be identified.

1.07 Cost Proposal Development

A. Upon written authorization by City to proceed, Design-Builder shall submit a Cost Proposal(s) for the completion of the Work, or portions of the Work, to City.

B. During the Proposal development process, Design-Builder may procure Subcontractors and Suppliers for those categories agreed upon by City during the Technical Exhibit Phase Services. The Design Builder will specifically procure Subcontractors and Suppliers for the proposed early work packages described in Task 1.05.J, such that these subcontracts may be executed upon the City's authorization of Phase 2 NTP.

1. Design-Builder shall conduct any Subcontractor or Supplier proposal process on an "open book" basis, and shall allow City to observe the receipt and analysis of all proposals. Design-Builder shall in-general follow procedures under ORS 279C.337 (3) for solicitation of offers for construction services from Subcontractors and suppliers.

2. Design-Builder shall invite at least four (4) proposers, if practical, and endeavor to receive price quotation from at least three (3) firms for all subcontracts and supplies where the quotations are expected to exceed $50,000, unless otherwise authorized by City. Design-Builder shall furnish copies of quotations to City for review prior to award. Design-Builder shall have the right to select on the basis of best value, after considering price and other factors. Copies of all subcontracts, including all modifications and/or revisions will be furnished to City within five (5) business days from issuance.

3. Design-Builder may select certain Subcontractors without going through the proposal process as required above if it first obtains City's written consent, which may be withheld at City's discretion.

4. Design-Builder shall not employ any Subcontractor or Supplier against whom City may have reasonable objection. Design-Builder shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any work against whom Design-Builder has reasonable objection.

C. Design-Builder's Proposal(s) shall include the following, unless the parties mutually agree otherwise:

1. A proposed Guaranteed Maximum Price ("GMP"), which shall be the sum of:

   a. Design-Builder's Fee.
   b. The estimated Cost of the Work, inclusive of any Direct Costs, Design-Builder's Contingencies, and Indirect Costs.

2. Included with the Proposal(s) shall be a written statement of its basis, which shall include:

   a. A complete list of the Technical Exhibits, including drawings and specifications, which were used in the preparation of the Proposal and are the baseline for the final design to be performed under the Design-Build Agreement.
   b. A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal(s), which list is intended to supplement the information contained in the drawings and specifications;
   c. To the extent not already established, the Scheduled Substantial Completion Date upon which the proposed GMP is based, and a Project Schedule upon which the Scheduled Substantial Completion Date is based;
   d. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

e. If applicable, a schedule of alternate prices;
f. If applicable, a schedule of unit prices;
g. If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s);
h. The amount of contingency included in the GMP;
i. Any proposed modifications to the most current draft of the proposed Design-Build Agreement;
j. A list of Subcontractors and Suppliers whose proposals have been accepted;
k. An updated letter from its surety or sureties verifying that Design-Builder has bonding capacity in the amount of the GMP; and
l. The time limit for acceptance of the Proposal(s), which shall be no less than 60 calendar days.

D. After submission of a Proposal, Design-Builder and City shall meet to discuss and review the Proposal, negotiate in good faith, and attempt to reach agreement on the terms of the Proposal. Design-Builder shall provide such information as City may reasonably request relative to the Proposal, with the understanding that all information that formed the basis for the GMP shall be available to City on an "open book" basis.

E. If the parties are unable to reach an agreement on the Cost Proposal within the time limit for acceptance specified in the Proposal, as may be extended by the mutual agreement of the parties, the Proposal shall be deemed withdrawn and of no effect. In such event, City and Design-Builder shall meet and confer as to how the Project will proceed, with City having the following options:

1. City may declare the Proposal development completed and authorize Design-Builder to continue to advance the final design of the Project as an amendment to the Design-Build Agreement or as an Additional Service, as applicable; or

2. City may terminate the relationship with Design-Builder and proceed to exercise its available options to perform the final design and construction with parties other than Design-Builder.

F. The GMP Proposal(s) development will be considered complete upon the earlier to occur of: (a) execution by City and Design-Builder of an amendment to the Design-Build Agreement for completion of the Phase 2 Work; (b) City's exercise of its options under Section 1.4 of the Design-Build Agreement; or (c) Design-Builder's exercise of its rights under paragraph 1.4.3 of the Design-Build Agreement.

ARTICLE 2 – ADDITIONAL SERVICES

2.01 City's Authorization in Advance Required

A. If authorized in writing by City, Design-Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by City as indicated in Article 6 of the Agreement.

1. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Design-Builder or its design requirements including, but not limited to, changes in size, complexity, City's schedule, character of construction, and revise previously accepted studies, reports, Technical Exhibits, or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design-Builder's control.

2. Perform services resulting from evaluation by Design-Builder during the Study and Technical Exhibit Phase Services at City's request of alternative solutions in addition to those specified.

3. Perform services required as a result of City's providing incomplete or incorrect City-Furnished Information.

4. Provide renderings or models for City's use.

5. Undertake investigations and studies of City's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; evaluate processes available for licensing, and assist City in obtaining process licensing, audits, or inventories required in connection with construction performed by City.

6. Perform services requiring out-of-town travel by Design-Builder that is out of scope, e.g., to conduct tours of proposed processes or equipment.

7. Except as set forth in Article 1 - Required Services, prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by City; and perform or furnish services required to revise studies, reports, Technical Exhibits or other GMP Proposal Documents as a result of such review processes.

8. Advance the final design of the Technical Exhibits, including creating Drawings and Specifications for construction of the Project.

SECTION 2 PHASE 2

2.1 Completion of Design

2.1.1 Drawings and Specifications

Design-Builder shall submit for Owner's review and written comment Drawings and Specifications based on the Contract Documents and the Preliminary Design Documents prepared under Phase 1 and any further development of Contract Documents that have been approved in writing by Owner. The Drawings and Specifications shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws or regulations enacted at the time of their preparation, *provided, however*, that if such codes, law, or regulations have changed between the date on which Design-Builder submitted its proposed Contract Price and the date of preparation, then Design-Builder shall be entitled to an equitable adjustment in the compensation and/or the Schedule. Construction shall be in accordance with these approved Drawings and Specifications. One set of these documents shall be furnished to Owner prior to commencement of construction.

2.1.2 Manuals

Design-Builder shall provide a Commissioning and Startup Manual and an Operations and Maintenance Manual for the Facility, each in such form and in such numbers as the parties may agree, and such other manuals as the parties may agree. All such manuals shall be provided no later than ninety (90) days prior to the scheduled date for the commissioning and startup of the Facility.

2.2 Construction Services

2.2.1 Notice to Proceed. Following Owner's written acceptance of Drawings and Specifications under Paragraph 2.1.1 above, Design-Builder will commence the performance of Construction Services.

2.2.2 **Completion.** In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

2.2.3 **Compliance.** Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

2.2.4 **Schedule.** Design-Builder shall prepare and submit a Schedule of Work in the form of a revised Attachment C, *Schedule,* for Owner's written approval. This Schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from Owner. It shall be revised as required by the conditions of the Work. The Schedule of Work shall be the basis for Design-Builder's management and control of the project and its reporting of progress to Owner.

2.2.5 **Permits.** Design-Builder shall obtain permits and governmental approvals as provided in GC 2.6.

2.2.6 **Safety and Hazardous Conditions.** Design-Builder shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Site. Design-Builder, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. However, Design-Builder shall not be responsible for the elimination or abatement of any pre-existing Hazardous Materials at the site or any safety hazards created or otherwise resulting from work at the Site carried on by Owner or its employees, agents, separate contractors or tenants. Owner agrees to cause its employees, agents, separate contractors, and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations, and Design Builder project safety plan. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

2.2.7 **Reports.** As provided in GC 2.1.2, Design-Builder shall provide monthly written reports to Owner on the progress of the Work. If the form of compensation of the Phase 2 Contract Price is a Guaranteed Maximum Price or Cost Reimbursable plus Fixed Design-Builder's Fee, then such monthly reports shall include a system of cost reporting for the Work, and also including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. If the form of compensation is a stipulated sum, the progress reporting will address progress and payment against an agreed upon schedule of values established prior to the commencement of Phase 2 of the work by the Design-Builder.

2.2.8 **Site Maintenance**. At all times Design-Builder shall maintain the Site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, Design-Builder shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

2.3 Hazardous Material

2.3.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. Design-Builder shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Site has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

2.3.2 If after the commencement of the Work, known or suspected Hazardous Material or Hazardous Conditions are discovered at the Site, Owner and Design-Builder shall proceed in accordance with the requirements of GC 4.1 ("Hazardous Conditions & Differing Site Conditions").

2.4 Patents & Copyright

2.4.1 Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Design-Builder and incorporated in the Work. Design-Builder agrees to defend, indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

2.4.2 Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Owner, specified in Attachment F - Owner's Project Criteria or otherwise directed by Owner to be incorporated in the Work. Owner agrees to defend, indemnify and hold Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any such patented or copyrighted materials, methods or systems specified by Owner.

2.5 Warranties and Completion

2.5.1 Design-Builder's warranty to Owner with respect to construction, including all materials and equipment furnished as part of the construction, shall be as specified in GC 2.9 ("Construction Warranty").

2.5.2 Design-Builder's warranty to Owner with respect to the performance of the Facility upon completion shall be as specified in GC 2.11 ("Performance Warranty").

2.5.3 Those products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of Owner shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof.

2.5.4 **All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.**

2.5.5 Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to Owner.

2.5.6 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner.

2.5.7 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their commissioning and initial start-up and testing, all in accordance with the Commissioning and Startup Manual to be provided by Design-Builder.

2.6 Limitations of Liability

2.6.1 Limitation of Liability. Design-Builder's liability for Owner's damages for any cause or combination of causes (including any liquidated damages), whether based upon contract, tort, breach of warranty, negligence, strict liability, or otherwise, shall be limited as set forth in Article 11 of this Agreement.

2.7 Additional Services

Design-Builder shall provide or procure the following Additional Services upon the request of Owner unless such services are specifically included in the Owner's Program or in an attachment to this Agreement. A written agreement between Owner and Design-Builder shall define the extent of such Additional Services and compensation therefor.

[The Owner should revise as appropriate to the needs of its project.]

2.7.1 Documentation of the Owner's Program, establishing the Project budget (beyond the Cost of the Work), investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

2.7.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

2.7.3 Surveys, site evaluations, legal descriptions and aerial photographs.

2.7.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

2.7.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

2.7.6 Consultations and representations other than normal assistance in securing building permits, before governmental authorities or others having jurisdiction over the Project.

2.7.7 Investigation or making measured drawings of existing conditions or the verification of drawings or other Owner-provided information.

2.7.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

2.7.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.

2.7.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations.

2.7.11 Making revisions to the Preliminary Design, Design Development, or Construction Documents after they have been reviewed by Owner, and which are due to causes beyond the control of Design-Builder.

2.7.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

2.7.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

2.7.14 The premium portion of overtime work ordered by Owner including productivity impact costs.

2.7.15 Document reproduction exceeding the allowances provided for in this Agreement.

2.7.16 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial startup, and adjusting and balancing of systems and equipment.

2.7.17 Services for tenant or rental spaces or third-party facilities not a part of this Agreement.

2.7.18 Services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design, construction and start-up and commissioning practice.

2.7.19 Serving or preparing to serve as an expert witness on behalf of Owner in connection with any proceeding, legal or otherwise, regarding the Project.

2.7.20 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes in the Work made during the Construction Phase.

2.8 **Subcontractors.** Work not performed by Design-Builder with its own forces shall be performed by Subcontractors. The provisions of this Agreement and the associated Contract Documents shall be incorporated into all major subcontracts for construction.

2.8.1 **Retaining Subcontractors.** Design-Builder shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, *provided* that Owner agrees to compensate Design-Builder for any additional costs incurred by Design-Builder as provided in GC 2.7.3. Design-Builder shall not be required to retain any Subcontractor to whom Design-Builder has a reasonable objection.

2.8.2 **Management of Subcontractors.** Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

2.8.3 **Assignment of Subcontract Agreements.** Design-Builder shall provide for assignment of subcontract agreements in the event that Owner terminates this Agreement for cause as provided in GC 11.2 ("Owner's Right to Perform and Terminate for Cause"). Following such termination, Owner shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

SECTION 3 OWNER'S RESPONSIBILITIES

3.1 Information and Services Provided by Owner

3.1.1 Owner shall provide full information regarding requirements for the Project in accordance with GC 3.2 and this Section 3.1, including the Owner's Program, Facility Performance Criteria and other relevant information, within the times specified in Attachment C, *Schedule*.

3.1.2 Owner shall provide:

1. All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, utilities, reports and investigations;

2. Inspection and testing services during construction as required by law or as mutually agreed; and

3. Unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other require services.

3.1.3 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Section 3.1.

3.2 Owner's Responsibilities during Phase 1

3.2.1 If not developed by Owner and Design-Builder under a prior agreement, Owner shall provide the Owner's Program at the inception of the Design Phase. Owner shall review and timely approve

schedules, estimates, and design documents furnished during the Design Phase as set forth in Section 3.1.

3.2.2 Owner shall arrange for access to and make all provisions for Design-Builder to enter upon public and private property as required for Design-Builder to perform Phase 1 services hereunder.

3.2.3 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and documents to be provided by Owner under this Section 3.2.

3.3 Owner's Responsibilities during Phase 2 Design and Construction

3.3.1 Owner shall review and approve the Schedule as set forth in Attachment C, *Schedule*, as revised.

3.3.2 If Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give written notice to Design-Builder within five (5) days of so becoming aware.

3.3.3 Unless otherwise agreed by Design-Builder, Owner shall communicate with Design-Builder's Subcontractors, Suppliers, and Design Consultants only through Design-Builder. Owner shall have no contractual obligations to Subcontractors or Suppliers or Design Consultants.

3.3.4 Owner may provide insurance for the Project as provided in Attachment E, *Indemnity, Insurance & Bonding*.

3.3.5 Owner shall provide timely, clear and adequate access to the site and any laydown areas.

3.3.6 Owner shall provide all equipment, materials, information, data, and approvals required for Design-Builder's performance of the Work in a timely and complete manner.

3.3.7 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and documents to be provided by Owner under this Section 3.3.

3.4 Owner's Representative

Owner's representative, designated in writing and agreed to by Design-Builder:

1. Shall be fully acquainted with the Project;
2. Agrees to furnish the information and services required of Owner when required so as not to delay the performance of the Work; and
3. Have authority to bind Owner in all matters requiring Owner's approval, authorization or written notice.

If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in advance in writing. Design-Builder shall have the right to approve any successor representative.

ATTACHMENT B

COMPENSATION

SECTION 1 PHASE 1 SERVICES

The Design-Builder shall be paid by the Owner for completed work for the services set forth in Attachment A, Scope of Work for Phase 1 Services. Such payment shall be full compensation for work performed; services rendered; and for furnishing all labor, materials, supplies, equipment, and incidentals necessary to complete the work as described below:

1.0 The Owner will pay Design-Builder on an hourly basis for work on Phase 1 Services and reimburse Design-Builder for direct project related expenses based on the hourly labor rates and project related expenses set forth in attached Exhibit A, Basis of Design-Builder Fee for Phase 1 Services. Design-Builder shall not add markups or administrative fees to Design-Builder's project related expenses. Travel time shall be charged by Design-Builder for only the time required to travel one-way to the project site. Owner's total payment to Design-Builder, including expense reimbursement, shall not exceed $1,937,048, which includes $18,000 to be paid under an early notice to proceed with the remainder of $1,919,048 paid during performance of services.

3.0 The Design-Builder shall submit invoices to the Owner no more frequently than on a monthly basis. Invoices shall detail the work, hours, and hourly costs for which payment is being requested and shall itemize the other direct project related expenses for which reimbursement is being requested. Receipts shall be presented for all direct project related expenses.

4.0 The Owner will make periodic payments to the Design-Builder for services performed and invoiced at an interval not less than thirty (30) days from the beginning of the work under this Agreement or from the time of a prior invoice. Amounts invoiced shall be computed pursuant to rates and limitations addressed elsewhere in this Agreement and which form the basis for the total Contract price to be paid. Owner payment for work satisfactorily performed by the Design-Builder will be made within thirty (30) days of the Owner's receipt of the Design-Builder's invoice.

In the event the Owner disputes any portion of the work invoiced, the Owner shall identify the basis of their dispute, the value of the disputed work, and their intent to withhold payment of said disputed amount pending satisfactory resolution of the issue between the parties. Should the Owner delay payment for non-disputed work, it is agreed that interest will be accrued on the value of such non-disputed work at a rate of 1.5 percent per month, or the maximum permitted by law, whichever is less. Interest shall accrue beginning thirty (30) days after the date of the Owner's receipt of the invoice. Payment(s) will first be credited to interest and then to principal.

5.0 The Owner shall have the right to inspect Design-Builder's books and records to verify the accuracy of Design-Builder's billing statements. Said right of inspection shall extend to all documents necessary to permit adequate evaluation of the billing data submitted

SECTION 2 CONTRACT PRICE FOR PHASE 2 SERVICES

1.0 Choice of Compensation Method for Phase 2 Services

1.1 The parties may elect to use the Guaranteed Maximum Price ("GMP") form of compensation, a stipulated sum (lump sum) form of compensation, or a cost-reimbursable form of compensation with a Fixed Fee for the Contract Price for the Phase 2 Services.

2.0 Option 1: Guaranteed Maximum Price ("GMP")

2.1 Use of a GMP for Phase 2 Work

2.1.1 Design-Builder agrees that upon Owner's request it will submit its proposal for the Contract Price on the basis of a GMP for the Phase 2 Services. Design-Builder does not guarantee any specific line item provided as part of the GMP (unless otherwise provided), but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as a basis for the GMP shall be identified in an agreed revision to this Attachment.

2.1.2 The GMP will include a Contingency which is available for Design-Builder's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors or omissions, and Subcontractor defaults. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner with notice of all anticipated charges against the Contingency included in the Contract Price or which may impact Owner's Project budget contingency.

2.1.3 If the parties so agree, the Phase 2 Services may be divided into separate work packages or task orders, and Design-Builder shall propose and Owner shall consider for acceptance a separate GMP for each such work package or task order.

2.2 GMP Established at the Commencement Date of Phase 2

2.2.1 **GMP Proposal**. Design-Builder shall submit to Owner a GMP Proposal for the Contract Price as part of the Phase 1 Services which shall include the following, unless the parties mutually agree otherwise:

1. A proposed GMP, which shall be the sum of:

i. Design-Builder's Fee as defined in Section 2, *Phase 2*, of Attachment B, *Compensation*; and

ii. The estimated Cost of the Work as defined in Section 2, *Phase 2*, of Attachment B, *Compensation*, inclusive of any Design-Builder's Contingency as defined in Section 1.1.2 above and any allowances and unit prices

2. A list of the drawings and specifications, including all addenda, used as the basis for the GMP proposal;

3. A list of the assumptions, exceptions, and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;

4. The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Paragraph 5.2.1 of the Agreement, and a schedule upon which the Scheduled Substantial Completion Date is based;

5. If applicable, a list of allowances and a statement of their basis;

6. If applicable, a schedule of alternate prices;

7. If applicable, a schedule of unit prices;

8. If applicable, a statement of Additional Services; and

9. The time limit for acceptance of the GMP Proposal.

2.2.2 **Review and Adjustment to GMP Proposal.** After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments

or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

2.2.3 **Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may it be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

2.2.4 **Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

1. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.2.3 above;
2. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 2, *Phase 2*, of Attachment B, *Compensation*, without a GMP, in which care all references in this Agreement to the GMP shall not be applicable; or
3. Owner may terminate this Agreement for convenience in accordance with GC 9.2 ("Termination for Convenience").

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item .2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with GC 9.4 ("Design-Builder's Right to Stop Work").

2.2.5 **Conversion**. The parties may agree at any time to convert the agreed GMP to a Fixed Contract Price utilizing a stipulated sum for the completion of the Phase 2 Services.

2.3 **Savings** *(Owner may or may not choose to include a savings clause, this decision will be made through discussions with Design-Builder.)*

2.3.1 **Savings Sharing**. If the Design-Builder's compensation is based upon a GMP, the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Paragraph 6.2 of the Agreement) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

(Owner may choose one of the following, or no savings clause:)

_____percent (____%) to Design-Builder and _____ percent (____%) to Owner.

or

The first _____Dollars ($_____) of Savings shall be provided to *(choose either Design-Builder or Owner)* _____with the balance of Savings, if any, shared _____ percent (_____%) to Design-Builder and _____ percent (____%) to Owner.

2.3.2 **Savings Calculation**. Savings shall be calculated and paid as part of Final Payment under Section 7.4 of the Agreement, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, Design-Builder shall be entitled to payment from Owner for that portion of such costs that were distributed to Owner as Savings.

2.4 **Basis.** Documents used as a basis for the GMP shall be identified in a mutually agreed revision to this Attachment.

3.0 **Option 2: Fixed Contract Price based upon a Stipulated Sum**

3.1 If the parties initially agree that the Phase 2 Services shall be performed on the basis of a Stipulated Sum, then the Design-Builder shall develop the proposed Contract Price on an "open book" basis and present it to Owner for review and approval. Such Fixed Contract Price Proposal shall include all the items listed in subsection 2.2.1 for a GMP Proposal, unless otherwise agreed.

3.2 Once the Fixed Contract Price is agreed, then this Agreement shall be amended to establish the Fixed Contract Price as the basis for the performance of the Phase 2 Services and such Fixed Contract Price shall not be subject to financial audit, nor shall Design-Builder be required to report or otherwise provide information to Owner as to actual costs incurred.

4.0 Option 3: Cost Reimbursable plus Design-Builder's Fee

4.1 If the parties agree that the Phase 2 Services shall be performed on a Cost Reimbursable basis plus a Fixed Design-Builder's Fee without a Guaranteed Maximum Price, then the Design-Builder shall develop an estimated Contract Price on an "open book" basis and present it to Owner for review and approval. Such Cost Reimbursable Contract Price Proposal shall include all the items listed in subsection 2.2.1 for a GMP Proposal, unless otherwise agreed.

4.2 The cost-reimbursable elements of the Work shall be those set forth in Section 4.4 ("Cost of the Work").

4.3 Design-Builder's Fee shall be:

(Owner will choose one of the following based on the basis for the GMP.)

_____ Dollars ($_____), as adjusted in accordance with the Contract Documents.

or

_____ percent (_____%) of the Cost of the Work, as adjusted in accordance with the Contract Documents.

4.3.1 Design-Builder's Fee will be adjusted as follows for any changes in the Work: *(Financial arrangements for adjustments will be included based on GMP proposal.)*

4.4 Cost of the Work.

The term "Cost of the Work" shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

(The costs included as "Cost of the Work" described below are illustrative. Owner and Design-Builder should agree to appropriate costs based on the needs of the project.)

1. Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, *provided, however*, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.
2. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.
3. Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices and performing design and Project administration functions. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a _____ percent (____%) markup to compensate Design-Builder for the Project-related overhead associated with Such personnel.
4. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on

wages and salaries paid to employees of Design-Builder covered under Paragraphs 2.2.1 through 2.2.3 hereof.

5. The reasonable portion of the cost of travel, accommodations, and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6. Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

7. Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work, *provided* that such defective, damaged or nonconforming Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Design-Builder shall use its best efforts to obtain recovery from the appropriate source and credit Owner if recovery is obtained.

8. Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

9. Costs less salvage value of materials, supplies, temporary facilities, machinery, vehicles, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

10. Costs of removal of debris and waste from the Site.

11. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

12. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

13. Premiums for insurance and bonds required by this Agreement or the performance of the Work.

14. All fuel and utility costs incurred in the performance of the Work.

15. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

16. Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, *provided* such costs do not arise from disputes between Owner and Design-Builder.

17. Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

18. The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

19. Deposits which are lost, except to the extent caused by Design-Builder's negligence.

20. Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

21. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

4.5 Non-Reimbursable Costs

(The costs excluded as "Cost of the Work" described below are illustrative. Owner and Design-Builder will agree to a list of excluded costs based on the 12.)

The following shall be excluded from the Cost of the Work:

1. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Paragraphs 4.4.1, 4.4.2 and 4.4.3 hereof.
2. Overhead and general expenses, except as provided for in Section 4.4.2 hereof, or which may be recoverable for changes to the Work.
3. The cost of Design-Builder's capital used in the performance of the Work.

ATTACHMENT C

SCHEDULE

(Owner and Design-Builder will agree upon final dates during contract negotiations. Dates provided below are Owner's intent for the project.)

Issue RFP	September 8, 2016
Proposer Notification of Intent to Attend Mandatory Confidential Meeting	September 12, 2016
City Notification of Mandatory Confidential Meeting Schedule	September 13, 2016
Mandatory Confidential Meetings	September 13, 14, and 15, 2016
Deadline for Questions	September 22, 2016
Issue Final Addenda	September 27, 2016
Qualifications/Technical Proposal Submission Due Date	October 5, 2016
Shortlist for Interviews	October 20, 2016
Issue Interview Format	October 21, 2016
Interviews	October 27, 2016
Cost Element Proposal Submission Due Date	October 27, 2016
Design-Builder Selection	November 4, 2016
City Council Award of Design-Build Agreement	November 16, 2016
Issue Notice-to-Proceed	November 30, 2016
Complete Phase 1: Study and Technical Exhibit Phase Services	June 13, 2017
City Council Award of Phase 2: Design-Build Phase Services	July 5, 2017
Issue Notice-to-Proceed for Phase 2: Design-Build Phase Services	July 6, 2017
Substantial Completion of the Project	October 1, 2018
Final Completion of the Project	October 31, 2018

ATTACHMENT D

GENERAL CONDITIONS

GC 1.0 General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder agree to cooperate fully with each other at all time, to permit each party to realize the benefits afforded under the Contract Documents.

1.1.2 These General Conditions ("GC") may be supplemented, varied, or revised through Supplementary Conditions ("SC"), as attached.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder with respect to the Project.

1.2.2 *Bonus Date* has the meaning given in Section 5.5 of the Agreement.

1.2.3 *Change in Law* has the meaning given in GC 8.1.2.

1.2.4 *Changed Condition* has the meaning given in GC 8.1.

1.2.5 *Change Order* has the meaning given in GC 7.1.

1.2.6 *Construction Warranty* has the meaning given in GC 2.9.

1.2.7 *Construction Warranty Period* is that period specified in GC 2.10.1.

1.2.8 *Contract Documents* has the meaning given in Section 2.1 of the Agreement.

1.2.9 *Contract Price* has the meaning given in Section 6.2 of the Agreement and Section 2 of Attachment B, Compensation.

1.2.10 *Contract Time(s)* shall mean the times for performance of the Work by Design-Builder and the delivery of items and approvals by Owner set forth in Article 5 ("Contract Time") of the Agreement and Attachment C, Schedule.

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

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

1.2.13 *Design Criteria* means those documents which define the Owner's criteria for the scope, quality, and function of the proposed facility, and which may be expanded to outline Owner's project cost limitations and schedule requirements.

1.2.14 *Differing Site Conditions* has the meaning given in GC 4.2.1.

1.2.15 *Early Completion Bonus* has the meaning given in Section 5.5 of the Agreement.

1.2.16 *Electronic Data* has the meaning given in GC 11.1.1.

1.2.17 *Extended Performance Warranty* is Design-Builder's warranty under GC 2.11.2 that the completed Facility shall be capable of meeting the Performance Standards in Attachment F throughout the Performance Warranty Period.

1.2.18 *Facility* is the physical facility to be designed and constructed for Owner as part of the Project.

1.2.19 *Facility Performance Criteria* means the Owner's criteria for the performance of the Facility once constructed, and may be divided into two parts, (i) program requirements such as the physical, functional, and quantitative needs of the project, and (ii) performance requirements for the Facility and its component parts, including considerations of the specified quantitative and

qualitative limits for inputs, the desired condition of Facility outputs, and the efficiency of the Facility in producing such outputs.

1.2.20 *Final Acceptance* of the Project shall be deemed to have occurred upon final payment pursuant to GC 5.8.

1.2.21 *General Conditions* refer to this Attachment D, *General Conditions*.

1.2.22 *Guaranteed Maximum Price or GMP* means the aggregate amount of the Design-Builder's Fee and the Cost of the Work that Owner shall be obligated to pay Design-Builder for performance of the Phase 2 Services.

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

1.2.24 *Hazardous Materials* has the meaning given in Section 2.3 of Attachment A, Scope of Work.

1.2.25 *Indemnified Parties*, with respect to Work Product, has the meaning given in Section 4.3.1 of the Agreement.

1.2.26 *Legal Requirements* are all federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work which are applicable as of the date of Design-Builder's proposal to Owner, and, subject to the Change in Law provisions of GC 8.1.2, which become applicable during the Contract Time.

1.2.27 *Liquidated Damages* means such damages as may be assessed under Section 5.4 of the Agreement.

1.2.28 *Liquidated Damages Date* has the meaning given in Section 5.4 of the Agreement.

1.2.29 *Manuals* means the Commissioning and Startup Manual and the Operations and Maintenance Manual provided for in Section 2.1.2 of the Agreement, and such other manuals as the parties may agree to be provided.

1.2.30 *Owner's Program* means the overall definition of Owner's requirements for the Project, including Owner's Project Criteria, all materials, equipment and other items to be provided by Owner, and all items to be provided by third parties.

1.2.31 *Owner's Project Criteria* are developed by or for Owner to describe Owner's Program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, Design Criteria, Facility Performance Criteria, performance tests, wage rate requirements, MBE/WBE requirements, and other Project-specific technical materials and requirements.

1.2.32 *Owner's Representative* means the individual selected and authorized by Owner to act upon Owner's behalf with respect to Design-Builder and the performance of this Agreement, in accordance with GC 3.4, and identified by Owner in writing within ten (10) days of execution of this Agreement.

1.2.33 *Performance Warranty* has the meaning given in GC 2.11.

1.2.34 *Performance Warranty Period* means the period ending 12 months following successful completion of the performance tests.

1.2.35 *Project* is the design and construction of the Owner's Facility, including start-up and the provision of manuals, warranties, as-built drawings and specifications, spare parts, and all other items required to be provided under this Agreement.

1.2.36 *Schedule* means that Schedule for the performance of the Work in accordance with the Contract Time(s) set forth in Attachment C, *Schedule*, as revised from time to time.

1.2.37 *Site* is the land or premises on which the Facility is located, including any separate laydown or storage areas.

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

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

1.2.40 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete (including performance testing) so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.41 *Certificate of Substantial Completion* is that Certificate issued by Owner to Design-Builder pursuant to GC 5.7.1.

1.2.42 *Uncontrollable Circumstances* acts, omissions, conditions, events, or circumstances beyond the control of Design-Builder and due to no fault of its own or those for whom Design-Builder is responsible. By way of example (and not limitation), Uncontrollable Circumstances include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other circumstances beyond the reasonable control of the party affected.

1.2.43 *Work* is comprised of all Design-Builder's design, construction, start-up, warranty, and other services required to by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents, plus manuals and documentation required by the Contract Documents.

GC 2.0 Design-Builder's Services and Responsibilities

2.1 General Services

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

2.1.2 Design-Builder shall provide Owner on a monthly basis a status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s), and (v) such other items as Owner may reasonably require.

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by GC 2.1.4, a preliminary schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). When agreed between the parties, such schedule shall be attached hereto as Attachment C, Schedule. The Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the Schedule shall

not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.1.5 At the completion of Phase 1 Services, the parties may agree upon a revised Schedule to reflect the intended scope of Phase 2 Services and as the basis for the Contract Price to be agreed for the Phase 2 services.

2.2 Design Professional Services

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

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Design-Builder, its Design Consultants, and its Subcontractors may reasonably rely on the accuracy and completeness of Owner's Project Criteria.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Such agreement may specify the percentage completion of the design documents to be submitted for such review and comment. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and comment on the interim design submissions in a time frame that is consistent with the turnaround times set forth in the Schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and may comment on the Construction Documents in accordance with the procedures set forth GC 2.4.1. Design-Builder shall proceed

with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

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

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

2.5 Legal Requirements

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

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

2.6 Government Approvals and Permits

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

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

2.7 Design-Builder's Phase 2 Construction Services

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

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts, errors or omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship

between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors.

2.7.6 If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Unreasonable disruption or interference by Owner's separate contractors may result in a request for a Contract Adjustment under GC 8.1.3.

2.7.7 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas.

2.7.8 Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

2.8 Design-Builder's Responsibility for Project Safety

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

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

2.8.3 Design-Builder's responsibility for safety under this GC 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety

precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.8.4 Owner shall require that its officers, employees, guests, visitors, and other contractors entering the Project Site comply with the Project Safety Program then in effect.

2.9 Construction Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable.

2.9.2 Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this GC 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Construction Warranty Period. Design-Builder agrees to correct any Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to GC 2.9, within a period of one (1) year from the date of Substantial Completion of the Work or Partial Substantial Completion of any portion of the Work, or within such longer period to the extent required by the Contract Documents.

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

2.10.3 The one (1) year period referenced in GC 2.10.1 applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Performance Warranty

2.11.1 Design-Builder warrants to Owner that the Facility will meet the Facility Performance Criteria set forth in Attachment F, *Owner's Project Criteria.* Such Performance Warranty shall be satisfied upon successful completion of the Performance Tests set forth in Attachment F, *Owner's Project Criteria.*

[The Owner may determine or the parties may agree (1) that the Extended Performance Warranty provided below in subsections 2.11.2 through 2.11.4 is not appropriate or required for the project and therefore such sections should be labeled "Not Used" or (2) that an extended

commissioning period with active participation by Design-Builder in Owner's operation subsequent to Substantial Completion should be required for the project.]

2.11.2 Design-Builder also warrants, subject to GC 2.11.3 and 2.11.4, that the completed Facility shall be capable of meeting the Performance Standards in Attachment F throughout the Performance Warranty Period ("Extended Performance Warranty").

2.11.3 Design-Builder shall have no responsibility under the Extended Performance Warranty to the extent that any failure of the Work is due to: (1) Owner action or non-action, such as (i) provision of inadequate staffing, (ii) failure to operate or maintain the Project in accordance with methods, standards and procedures generally recognized and accepted as good industry practices and with the Operation and Maintenance Information Systems prepared by Design-Builder, (iii) abuse, negligence or willful misconduct, or (iv) alteration of the Work; (2) Uncontrollable Circumstances; (3) Change in Law; (4) noncompliant operating conditions, such as raw [water or wastewater] influent not conforming to the parameters in Attachment F or other conditions exceeding the Project's design criteria in Attachment F; (5) unavailability of supplies, spare parts, chemicals, power or other consumables or items necessary for operation and maintenance; or (6) impossibility or frustration of purpose.

2.11.4 If the Work fails to satisfy the Extended Performance Warranty, Design-Builder shall, upon written notice from Owner delivered not later than five (5) days after any such failure, promptly begin and continue to take necessary actions (including training or support of Owner's operation and maintenance staff; revision of operating or maintenance procedures; or modification or correction of equipment or facilities) to satisfy the Extended Performance Warranty. The costs of any such training or support of Owner's operations staff or revision of operating procedures that are effective in achieving satisfaction of the Extended Performance Warranty shall be paid by Owner. The costs of any such modification or correction of equipment or facilities required to achieve satisfaction of the Extended Performance Warranty shall be paid by the Design-Builder without reimbursement from Owner, subject to any applicable limitation of liability set forth in this Agreement. Before any necessary correction or modification of equipment or facilities is initiated by the Design-Builder, all reasonable efforts to satisfy the Performance Warranty through operational training, support and revision shall be completed and a plan indicating the scope and schedule for such work shall be prepared by the Design-Builder and approved by Owner.

GC 3.0 Owner's Services and Responsibilities

3.1 Duty to Cooperate

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

3.1.2 Owner shall provide reviews and approvals of interim design submissions and Construction Documents consistent with the turn-around times set forth in the Schedule. Owner's review does not constitute acceptance of design errors or omissions, or transfer of any design liability to Owner.

3.2 Furnishing of Services and Information

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

1. Surveys describing the property boundaries, topography and reference points for use during construction, including existing service and utility lines;
2. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
3. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project, access to the Site and any off-site storage or lay-down areas, and to enable Design-Builder to perform the Work;
4. A legal description of the Site;
5. To the extent available, as-built and record drawings of any existing structures and utilities at the Site; and
6. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

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

3.3 Financial Information

3.3.1 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources.

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

3.3.3 [*Optional language*: Design-Builder shall not be required as a condition of award or contract to waive or subordinate its mechanic's lien rights, if any, to Owner's construction lender(s).]

3.4 Owner's Representative

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

3.4.2 [*Optional language*: If Owner retains a third party as Owner's Engineer or Owner's Program Manager, separately from Owner's Representative, then Owner shall designate such third party in writing to Design-Builder, together with a statement of the respective roles, responsibility, and authority of each such party with respect to the administration of the contract, the approval of drawings and specifications, the issuance of instructions and change orders, the resolution of disputes, and the relative priority of the authority of such parties.]

3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as part of Attachment F, *Owner's Project Criteria.*

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

3.6 Owner's Separate Contractors

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

3.6.2 Owner recognizes the importance that all work performed on the Project or at the Site by separate contractors under separate agreements with Owner is performed in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Owner shall require such separate contractors to assume responsibility for implementing and monitoring all safety precautions and programs related to the performance of their work.

GC 4.0 Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

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

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

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

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

4.1.5 To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless Design-Builder, Design Consultants, Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, costs and expenses incurred in connection with litigation or arbitration, arising out

of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee.

4.1.6 Notwithstanding the preceding provisions of this GC 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Design Consultants, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by the parties identified in the first sentence of this GC 4.1.6.

4.1.7 The terms of this GC 4.1 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

4.2 Differing Site Conditions

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

4.2.2 Upon encountering a Differing Site condition, or upon recognition of the impact associated with such condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than seven (7) days after such condition has been encountered or recognized. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

GC 5.0 Payment

5.1 Payment for Phase 1 Services

5.1.1 Design-Builder will submit an Application for Payment to Owner each month covering Phase 1 services performed to date. Each Application for Payment will be prepared in the standard form agreed to by the parties and supported by required documentation.

5.2 Schedule of Values for Phase 2 Services

5.2.1 Within ten (10) days of the Date of Commencement, Design-Builder shall submit for Owner's review and approval a schedule of values for Phase 2 of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

5.3 Monthly Progress Payments

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

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

5.3.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

5.4 Withholding of Payments; Payment of Undisputed Amounts

5.4.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due, including the release of retention under Section 7.3.1 of the Agreement. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under GC 8.0.

5.4.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

5.5 Right to Stop Work and Interest

5.5.1 If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to GC 9.4. All payments due and unpaid shall bear interest at the rate set forth in Section 7.5 of the Agreement.

5.6 Design-Builder's Payment Obligations

5.6.1 Design-Builder will pay any Subcontractors and Design Consultants, in accordance with applicable law and its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Subcontractors and Design Consultants to pay those parties with whom they have contracted.

5.6.2 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within ten (10) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to

discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and charge Design-Builder with any costs and expenses incurred, including attorneys' fees.

5.7 Substantial Completion

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

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

5.7.3 Owner, at its option, may use a portion to the Work which has been determined to be substantially complete, provided that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in GC 5.7.1, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and (iii) Owner and Design-Builder, agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

5.7.4 Upon Substantial Completion, Design-Builder shall conduct performance testing of the Facility using Owner's operations and maintenance staff to demonstrate that the Performance Criteria set forth in Attachment F, *Owner's Project Criteria*, have been satisfied and that the Performance Guarantees have been met. Performance testing on project components may be allowed earlier than Substantial Completion if mutually agreed between the City and Design-Builder.

5.8 Final Payment

5.8.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, *provided* that Design-Builder has completed all of the Work in conformance with the Contract Documents.

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

1) An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
2) A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
3) Consent of Design-Builder's surety, if any, to final payment;

4) A certificate demonstrating that performance testing is complete and that the Performance Guarantees set forth in Attachment F, *Owner's Project Criteria*, have been met;

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

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

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

5.8.4 Final payment by Owner shall constitute Final Acceptance of the Project for all purposes hereunder, subject to Design-Builder's remaining warranty obligations and any remaining indemnity obligations hereunder.

5.8.5 Acceptance of final payment by the Design-Builder, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

GC 6.0 Time

6.1 Obligation to Achieve the Contract Times

6.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5.0 of the Agreement.

6.2 Delays to the Work

6.2.1 If Design-Builder is delayed in the performance of the Work due to Uncontrollable Circumstances, the Contract Time(s) for performance shall be reasonably extended by Change Order, and the Schedule adjusted accordingly.

6.2.2 In addition to Design-Builder's right to a time extension for delays in the Work under GC 6.2.1, Design-Builder shall also be entitled to an equitable adjustment of the Contract Price and equitable commutation of any Liquidated Damages under Section 5.4 of the Agreement.

GC 7.0 Changes to the Contract Price and Time

7.1 Change Orders

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

1. The scope of the change in the Work;
2. The amount of the adjustment to the Contract Price; and
3. The extent of the adjustment to the Contract Time(s) and Schedule.

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

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

7.2 Work Change Directives

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

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

7.2.3 [*Optional language*: If Owner has requested a proposal for a change in the Work from Design-Builder, Owner shall notify Design-Builder as expeditiously as possible whether such proposal is accepted. Design-Builder shall not commence changed work until a written Work Change Directive or Change Order has been delivered by Owner. The parties recognize that delay in response to such proposals may increase the impact or cost of the Change.]

7.3 Minor Changes in the Work

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

7.4 Contract Price Adjustments

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

1. Unit prices set forth in the Agreement or as subsequently agreed between the parties (which may include daily or monthly overhead rates for the extension of services);
2. A mutually-accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
3. Costs, fees and any other markups set forth in the Agreement; and
4. If an increase or decrease cannot be agreed to as set forth in items 1 through 3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase or a decrease in the Contract Price, overhead and profit shall be calculated on the basis of the net increase or decrease to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

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

7.4.3 If Owner and Design Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to GC 8.0. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform

the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to _percent (_%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

7.4.4 Unless otherwise agreed by the parties, the Design-Builder's markup for indirect costs and profit on additional costs included in an adjustment to the Contract Price under this section 7.4 shall be equal to _percent (%) of such additional costs. *(Percent will be completed at time GMP is accepted.)*

7.5 Emergencies

7.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this GC 7.0.

GC 8.0 Contract Adjustments and Disputes

8.1 Requests for Contract Adjustments and Relief

8.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any Changed Condition arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief.

8.1.2 A Changed Condition may include a Change in Law following the date of Design-Builder's proposal to Owner which has a material impact on the cost of the Work, the Schedule, the Performance Criteria, or other aspects of Design-Builder's performance hereunder.

8.1.3 Changed Conditions may include Uncontrollable Circumstances having an impact on Design-Builder's cost of the Work, the Schedule, the Performance Criteria, or other aspects of Design-Builder's performance hereunder.

8.1.4 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

8.1.5 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, and, if then available, the specific contractual adjustment or relief requested and the basis of such request.

8.2 Dispute Avoidance and Resolution

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

8.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the Project level through discussions between Design-Builder's Representative and Owner's Representative.

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

8.2.4 If, after meeting, the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, then the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

8.3 Arbitration

8.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in GC 8.2, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

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

8.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this GC 8.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

8.3.4 In any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, each party shall be responsible for its own legal costs, including attorneys' fees.

8.3.5 The arbitration shall be held at the location of the Project, unless the parties mutually agree to another acceptable site for the arbitration. The law applicable to the arbitration shall be the law of the jurisdiction in which the Project is located.

8.4 Duty to Continue Performance

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

GC 9.0 Suspension and Termination

9.1 Owner's Right to Stop Work

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

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

9.2 Termination for Convenience

9.2.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

1. All Work executed and for proven loss, cost or expense in connection with such Work;
2. The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
3. The fair and reasonable sums for overhead and profit on the sum of items **1.** and **2.** above.

9.2.2 If Owner terminates this Agreement pursuant to GC 9.2.1 and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work product shall be as set forth in Section 4.3 ("Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate").

9.3 Owner's Right to Perform and Terminate for Cause

9.3.1 *If* Design-Builder persistently falls to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, *then* Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in GC 9.3.2, 9.3.3, and 9.3.4.

9.3.2 Upon the occurrence of an event set forth in GC 9.3.1, Owner shall provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner shall give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner shall declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

9.3.3 Upon declaring the Agreement terminated pursuant to GC 9.3.2, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

9.3.4 In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance

with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in GC 2.12.2.

9.3.5 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of GC 9.2.

9.4 Design-Builder's Right to Stop Work

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

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

9.4.2 Should an event set forth in GC 9.4.1 occur, Design-Builder shall provide Owner with written notice that Design-Builder will stop work unless such event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder shall stop work. In such case, Design-Builder shall make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

9.5 Design-Builder's Right to Terminate for Cause

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

1. The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of a court order, any government authority having jurisdiction over the Work, or orders by Owner under GC 9.1.1, *provided* that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible; or
2. Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to GC 9.1.1; or
3. Owner's failure to cure the problems set forth in GC 9.4.1 after Design-Builder has stopped the Work.

9.5.2 Upon the occurrence of an event set forth in GC 9.5.1, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be

entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under GC 9.2.

9.6 Bankruptcy of Owner or Design-Builder

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

1. The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
2. The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this GC 9.0.

9.6.2 The rights and remedies under GC 9.6.1 shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions.

GC 10.0 Miscellaneous

10.1 Assignment

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

10.2 Successorship

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

10.3 Governing Law

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

10.4 Severability

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

10.5 No Waiver

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

10.6 Headings

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

10.7 Notice

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

10.8 Amendments

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

10.9 Third Parties

10.9.1 The services to be performed by Design-Builder are intended solely for the benefit of the Owner. No person or entity not a signatory to this Agreement shall be entitled to rely on the Design-Builder's performance of its services hereunder, and no right to assert a claim against the Design-Builder by assignment of indemnity rights or otherwise shall accrue to a third part.

GC 11.0 Electronic Data

11.1 Electronic Data.

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

11.2 Transmission of Electronic Data

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

11.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of

Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

11.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4.0 of the Agreement ("Ownership of Work Product"). Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

11.3 Electronic Data Protocol

11.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this GC 11.3.

11.3.2 Electronic Data will be transmitted in the format agreed upon in GC 11.2.1, including file conventions and document properties, unless prior arrangements are made in advance in writing.

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

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

ATTACHMENT E

INDEMNITY, INSURANCE & BONDING

1.0 Indemnity

1.1 To the fullest extent permitted by law, Design-Builder shall defend, indemnify and hold Owner harmless from all claims by third parties for bodily injury and property damage (other than to the Work itself and other property insured hereunder) that may arise in whole or in part from any negligent acts, errors or omissions of the Design-Builder, its contractors, officers, officials, employees and agents, from the performance of the Work, except that Design-Builder shall have no duty to defend Owner from claims based exclusively on professional services. If any Damages are caused by or result from the concurrent negligence of Design-Builder, its contractors, officers, officials, employees, and agents, and the Owner, its officers, officials, employees, or agents, Design-Builder's liability shall be only to the extent of Design-Builder's negligence. Design-Builder shall not be required to defend, indemnify or hold harmless Owner for any acts, omissions or negligence of Owner, Owner's employees, agents or separate contractors.

1.2 Owner shall cause any other contractor who may have a contract with Owner to perform work in the areas where Work will be performed under this Agreement, to agree to indemnify and defend Design-Builder, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and hold them harmless from all claims for bodily injury and property damage, other than property insured under Section 5.0, that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to Design-Builder.

1.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, then Design-Builder's indemnity obligation set forth in Section 1.1 above shall not be limited by any limitation on the amount of damages, compensation, or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

2.0 Design-Builder's Liability Insurance

2.1 Design-Builder shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from Design-Builder's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

(The claims and limits described below are illustrative. Owner will revise as appropriate to the needs of its project.)

2.1.1 Workers' compensation, disability and other employee benefit claims under acts applicable to the Work;

2.1.2 Under applicable employers' liability law, bodily injury, occupational sickness, disease or death claims of Design-Builder's employees with limits of $1,000,000 per accident or employee disease;

2.1.3 Bodily injury, sickness, disease or death claims for damages to persons not employed by Design-Builder;

2.1.4 Usual personal injury liability claims for damages directly or indirectly related to the person's employment by Design-Builder or for damages to any other person;

2.1.5 Damage to or destruction of tangible property, including resulting loss of use, claims for property other than the Work itself and other property of third parties;

2.1.6 Bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle; and

2.1.7 Contractual liability claims involving Design-Builder's obligations under Paragraph 1.1.

2.2 Design-Builder's Commercial General and Automobile Liability Insurance as required by Paragraph 2.1 shall be written for the following limits of liability:

(Owner will consult with its insurance or risk management personnel or advisor is setting limits of liability for the insurance coverages required for its project. The limits below are illustrative of the limits being considered.)

1.	Commercial General Liability Insurance		
	a.	Each Occurrence Limit	$ 5,000,000
	b.	General Aggregate	$ 5,000,000
	c.	Products/Completed Operations Aggregate	$ 5,000,000
	d.	Personal and Advertising Injury Limit	$ 5,000,000
2.	Commercial Automobile Liability Insurance		
	a.	Combined Single Limit Bodily Injury and Property Damage	$ 5,000,000 Each Accident

Owner shall be an Additional Insured on Commercial General Liability insurance and the Commercial Automobile Liability insurance obtained by Design-Builder pursuant to this clause.

3. Contractor's Pollution Liability Insurance. Design Builder shall maintain Contractor's Pollution Liability insurance and shall provide the following limits of liability:

a. $2,000,000 per loss

b. Annual aggregate limit of $2,000,000

2.3 The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice (except ten [10] days for non-payment of premium) has been given to Owner. Certificates of insurance showing required coverage to be in force shall be filed with Owner prior to commencement of the Work.

2.4 Products and Completed Operations insurance shall be maintained for a period of two year(s) after either ninety (90) days following the date of Substantial Completion or final payment, whichever is earlier.

2.5 The insurance limits stated in this Attachment E may be satisfied through a combination of underlying and excess or umbrella coverage.

2.6 **Subcontractors**. Design-Builder shall require that all Subcontractors working on the Project secure and maintain the same insurance coverages required for Design-Builder for workers' compensation insurance, employer's liability insurance, commercial automotive liability insurance and commercial general liability insurance and other financial sureties required by applicable law in connection with their presence and the performance of their duties pursuant to this Agreement, provided that Design-Builder may approve lower limits for specific

subcontractors pursuant to a request submitted by Design-Builder to Owner prior to any work being performed by subcontractor. Design-Builder shall require that all subcontractors performing engineering services and all subcontractors performing work with potential pollution liability risk secure and maintain Professional Liability or Pollution Liability insurance coverage, respectively, with such coverage limits commensurate with the scope of the subcontract work performed. Owner, Design-Builder and all other parties required of Design-Builder shall be named as additional insured on subcontractor's required commercial general liability insurance policy. Alternatively, Design-Builder may obtain and maintain said policies and sureties on the subcontractor's behalf.

3.0 Professional Liability Insurance

Professional liability insurance for claims arising from the negligent performance of professional services under this Agreement shall be written for $2,000,000 per claim and in the annual aggregate with a self-insured retention not to exceed $1,000,000. These requirements shall be continued in effect for two year(s) after the date of Substantial Completion. If the Design-Builder retains consultants for a portion of the design, Owner may approve lower limits for specific Design Consultants pursuant to a request submitted by Design-Builder to Owner prior to any work being performed by such Design Consultants. *(Owner will consult with its insurance or risk management personnel or advisor is setting limits of liability for the insurance coverages required for its project. The limit indicated is illustrative of the limit being considered.)*

4.0 Owner's Liability Insurance

4.1 Owner shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement may be purchased and maintained at Owner's discretion.

4.2 If Owner hires separate contractors with respect to the Project or for any portion of the Work, then Owner shall require that such separate contractors waive any insurers' rights of subrogation against the Design-Builder and its Subcontractors, Design Consultants, and their officers, directors, and employees.

5.0 Insurance to Protect Project

5.1 Design-Builder shall obtain and maintain Builder's Risk Property Insurance including work and materials, upon the entire project for the full replacement cost at the time of loss. This insurance shall include as named insureds Owner, Design-Builder, Subcontractors and Subsubcontractors. The policy shall insure against direct risk of physical loss or damage including flood or other water damage, earthquake, transit, off-premises storage, boiler and machinery, delay in opening, testing (both hot and cold) [*and damage resulting from defective design, faulty workmanship or materials*]. Minimum deductible [or self-insured retention] for all risks perils is [insert value] except flood and earthquake which shall be [insert value] and [insert value] respectively. Subcontractors shall be responsible for up to a [insert value] deductible [or self-insured retention] per the Subcontract Terms and Conditions.

[Note 1: The deductibles available for flood and earthquake may vary by year and by location of project. Consult with your insurance or risk management personnel or advisor.*]*

[Note 2: It may not be feasible to obtain Builder's Risk Property Insurance coverage which includes "damage resulting from defective design, faulty workmanship or materials." Consult with your insurance or risk management personnel or advisor.*]*

The Builder's Risk Property Insurance shall contain provisions to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the

insureds or additional insureds. Owner, Design-Builder, Subcontractors and Subsubcontractors and Suppliers of any tier waive all rights and claims against each other and their respective officers, directors, employees and agents for all loss or damages including loss due to business interruption, loss of use or other consequential damage extending beyond direct physical loss or damage to Owner's property or the work whether or not insured by Owner, caused by, arising out of or resulting from any of the perils covered by such insurance and any other property insurance applicable to the Work during construction and after. None of the waivers will extend to the rights of any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy issued.

Owner and Subcontractor(s) shall maintain at their option, separate all risk commercial property insurance to cover their property, tools and equipment not covered by the Builder's Risk Insurance Policy.

5.2 If Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by Owner and Design-Builder and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be canceled or lapsed on account of partial occupancy. Consent of Design-Builder to such early occupancy or use shall not be unreasonably withheld.

5.3 Owner shall obtain and maintain boiler and machinery insurance as necessary. The interests of Owner, Design-Builder, Subcontractors and Subsubcontractors shall be protected under this coverage.

5.4 Upon Substantial Completion and during any period of startup, testing, commissioning, or when Project has been put to its intended use, Owner shall obtain and maintain Permanent Property insurance with respect thereto consistent with that insurance which Owner obtains and maintains with respect to any damage or loss to its permanent plant during commercial operation. Design-Builder, Subcontractors and Subsubcontractors shall be named as additional insured on such insurance, and Owner hereby waives any rights of subrogation with respect thereto.

6.0 Property Insurance Loss Adjustment

6.1 Any insured loss shall be adjusted with Owner and Design-Builder and made payable to Owner and Design-Builder as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

6.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with a mediation agreement, or, if not resolved through mediation, then by an arbitration award pursuant to arbitration. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution by mediation or arbitration.

7.0 Waiver of Subrogation

7.1 Owner and Design-Builder waive all rights against each other, and any of their respective employees, agents, consultants, subcontractors and subsubcontractors for damages caused by risks covered by insurance provided in Section 5.0 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by Owner and Design-Builder as trustees. Design-Builder shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements.

7.2 Owner waives subrogation against Design-Builder, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

7.3 If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

(With respect to Bonding, the Owner and Design-Builder will review bonding requirements and select the option below that best fits the needs of the Project during GMP negotiations.)

8.0 Bonding

8.1 Design-Builder will provide Performance and Payment Bonds for the Phase 2 Services. The costs of such bonds shall be in addition to the Contract Price.

8.2 ***[Option 1]*** Design-Builder shall furnish Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance and payment of all Design-Builder's obligations to furnish, provide and pay for Construction and related materials, design, and other services under the Contract Documents.

[Option 2] Design-Builder shall furnish Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance of all Design-Builder's contractual obligations hereunder with respect to both design and construction of the Project, and as security for payment of all Design-Builder's obligations to furnish, provide and pay for Construction and related materials under the Contract Documents.

8.3 These Bonds shall remain in effect after the date of Substantial Completion at least until expiration of the warranty period, except as provided otherwise by Laws or Regulations or by the Contract Documents.

8.4 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

8.5 **Licensed Sureties.** All Bonds required by the Contract Documents to be purchased and maintained by Design-Builder shall be obtained from surety companies that are duly licensed or authorized to issue bonds in the jurisdiction in which the Project is located to issue Bonds for the limits and coverages so required.

ATTACHMENT F

OWNER'S PROJECT SCOPE AND CRITERIA

1.0 Project Scope

(Description of the scope of the project will be inserted following selection and negotiations with selected Design-Builder. Project scope will substantially follow that provided in the RFP)

2.0 Design Criteria

(Description and/or reference to Owner's design criteria will be inserted following selection and negotiations with Design-Builder. Design criteria will substantially follow that in the RFP).

3.0 Facility Performance Criteria

(Description and/or reference to Owner's preliminary performance criteria will be inserted following selection and negotiations with Design-Builder. The preliminary performance criteria will substantially follow that in the RFP. Preliminary criteria should be refined by agreement of Owner and Design-Builder during the Phase 1 Services. Alternatively, these criteria can be developed during the Phase 1 Services.]

4.0 Performance Tests

(Owner will insert required or preferred preliminary requirements for performance tests for its project that may be available at the time the Agreement is signed and such preliminary requirements will be refined by agreement of Owner and Design-Builder during the Phase 1 Services.)

ATTACHMENT G

OWNER'S PERMIT LIST

1. Site Plan approval for planning and zoning compliance.

(Owner will add a final listing of permits and other governmental approvals that it will bear responsibility to obtain. Currently, the list only includes planning and zoning, other permits or approvals will be added following selection and negotiations with Design-Builder)