

**STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER (Lump Sum Price)**

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ARTICLE 1 AGREEMENT

This Agreement is made this [] Day of [] in the year [], by and between the

OWNER: City of Williston

and the

DESIGN-BUILDER: []

PROJECT: Funding, development, and operation of a rental car Quick Turn Around ("QTA") facility to complete light maintenance, cleaning, and fueling at the Williston Basin International Airport ("XWA").

ARTICLE 2 GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP The Design-Builder agrees to furnish or procure, as permitted by Law, the architectural and engineering services set forth below and the construction and administration of the Work.

2.1.1 Neither Design-Builder nor any of its agents, subcontractors, or employees shall act on behalf of or in the name of Owner unless authorized in writing by Owner's Representative.

ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents,

officers and employees, Design Professional, Subcontractors, Sub-subcontractors, Suppliers or Others, to secure preferential treatment.

2.2 DESIGN PROFESSIONAL Architectural and engineering services shall be provided or procured by independent design professionals retained by Design-Builder or furnished by employees or affiliates of Design-Builder, as permitted by the Law. Where required by law, the architectural and engineering services shall be performed by individuals holding the appropriate licenses. The person or entity providing architectural and engineering services shall be referred to as Design Professional. If Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Design-Builder and Design Professional. The Design-Builder may retain subconsultants, including affiliated or related entities, to provide any or all of the architectural services.

2.2.1 STANDARD OF CARE Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project as outlined in Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.

2.3 DEFINITIONS

2.3.1 "Agreement" means this Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

2.3.1.1 EXHIBIT A: Agreement establishing Fast-Track Approach and Construction Schedule, [] pages.

EXHIBIT B: Basis of Design/Owner's Program.

EXHIBIT C: Site Plan

EXHIBIT D: RFQ Submission

2.3.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3 A "Change Order" is a written order signed by Owner and Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

2.3.4 "Construction Schedule" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

2.3.5 The "Contract Documents" consist of those documents identified in section 14.1.

2.3.6 The "Contract Time" is the period between the Date of Commencement and total time authorized to achieve Final Completion.

2.3.7 "Day" means calendar day.

2.3.8 "Date of Commencement" is as provided for in section 6.1.

2.3.9 "Defective Work" is any portion of the Work not in substantial conformance with the requirements of the Contract Documents.

2.3.10 "Final Completion" occurs on the date when Design-Builder's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable.

2.3.11 A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up.

2.3.12 "Interim Directive" is any written order containing Work instructions that is signed by Owner after execution this Agreement and before Substantial Completion to the Work directed by Owner.

2.3.13 "Law" means a federal, state or local law, ordinance, code, rule, or regulation applicable to the Work with which Design-Builder must comply that are enacted as of the Agreement date.

2.3.14 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, sub-subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.3.15 "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder's employees in Design-Builder's principal and branch offices; (b) general and administrative expenses of Design-Builder's principal and branch offices including charges against Design-Builder for delinquent payments; and (c) Design-Builder's capital expenses, including interest on capital used for the Work.

2.3.16 The "Owner" is the person or entity identified in ARTICLE 1, and includes Owner's representative(s).

2.3.17 The "Owner's Program" is a description of Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, together with Schematic Design Documents which shall include drawings, outline specifications, and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite.

2.3.18 The "Parties" are collectively Owner and Design-Builder.

2.3.19 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by Owner or Others.

2.3.20 "Project schedule" A schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.

2.3.21 A "Subcontractor" is a person or entity retained by Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional, or any separate contractor employed by Owner or any separate contractor's subcontractors.

2.3.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by The Parties.

2.3.23 A "Sub-subcontractor" is a party or entity who has an agreement with a Subcontractor or other Sub-subcontractor, or Supplier to perform any portion of the Work or to supply material or equipment.

2.3.24 A "Supplier" is a person or entity retained by Design-Builder to provide material and equipment for the Work.

2.3.25 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.26 The "Work" is the design services procured in accordance with §3.1, the construction services provided in accordance with §3.2, additional services in accordance with §3.11, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.3.27 "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

3.1 DESIGN SERVICES Pursuant to a mutually agreeable schedule, Design-Builder shall submit for Owner's written approval, Design Development Documents and Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by Owner.

3.1.1 Design Development Documents The Design-Builder shall submit for the Owner's review, the Design Development Documents which further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from any previously approved Owner's Program. The Design-Builder shall provide to the Owner an update on the schedule and budget based upon the changes made in the Design Development Documents. Any changes in the Work contained in the Design Development Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion.

3.1.2 Construction Documents. Based upon the approved Design Development Documents, the Design-Builder shall submit for the Owner's review, Construction Documents which set forth in detail the requirements for construction of the Work. When Design-Builder submits the Construction Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. The Design-Builder shall provide to the Owner an update on the schedule and budget based upon the changes made in the Construction Documents. Any changes in the Work contained in the Construction Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to Owner before commencing construction.

3.1.3 OWNERSHIP OF DOCUMENTS

3.1.3.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Design-Builder or in the event of termination

under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

3.1.3.2 COPYRIGHT The Parties agree that the Documents represent instruments of the Design Builder's services and that the Design Builder shall retain all intellectual property rights in the Documents including copyright.

3.1.3.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, Owner upon payment of all sums due to Design-Builder under Article 11.1, shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project.

3.1.3.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design-Builder's involvement or on other projects is at Owner's sole risk, and Owner shall indemnify and hold harmless Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use of the Documents or use of the Documents without Design Builder's involvement or written authorization.

3.1.3.5 Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by Design-Builder to Owner in this Agreement.

3.2 CONSTRUCTION SERVICES

3.2.1 Construction will commence upon the issuance by Owner of a written notice to proceed.

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

3.2.3 COMPLIANCE WITH LAW Design-Builder shall give required notices and exercise reasonable care to comply with applicable Laws at its own cost.

3.2.3.1 CHANGES IN LAW The Contract Price or Contract Time, or both shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement

3.2.4 Design-Builder shall obtain, and Owner shall pay, in addition to the Contract Price, for the building permits necessary for the construction of the Project.

3.2.5 Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Owner shall be afforded access to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.2.6 Design-Builder shall provide periodic written reports to Owner on the progress of the Work in such detail as is required by Owner and as agreed to by The Parties. In the event the Owner requests more than monthly written reports during the Contract Time, such additional reports will be provided as an additional service on a time and materials basis.

3.2.7 Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.2.8 Design-Builder shall prepare and submit to Owner either:

- final marked up record drawings
- updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3 CONSTRUCTION SCHEDULE Design-Builder shall prepare and submit a Schedule of Work for Owner's acceptance and written approval. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties.

3.4 SAFETY OF PERSONS AND PROPERTY

3.4.1 SAFETY PRECAUTIONS AND PROGRAMS Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable Laws.

3.4.2 Design-Builder shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1 its employees and other persons at the Worksite;

3.4.2.2 materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.4.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE Design-Builder shall designate an individual at the Worksite in the employ of Design-Builder who shall act as Design-Builder's designated safety representative. Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to Owner. When Design-Builder is required to file an accident report with a public authority, Design-Builder shall furnish a copy of the report to Owner.

3.4.4 Design-Builder shall provide Owner with copies of all notices required of Design-Builder by Law. Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Design-Builder, or anyone for whose acts Design-Builder may be liable, shall be promptly remedied by Design-Builder. Damage or loss attributable to the acts or omissions of Owner or Others and not to Design-Builder shall be promptly remedied by Owner.

3.4.6 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Builder's safety program, may require Design-Builder to stop performance of

the Work or take reasonable corrective measures satisfactory to Owner, or both. If Design-Builder does not adopt reasonable corrective measures, Owner may perform them and reduce the amount of the Contract Price by the costs of the reasonable corrective measures. Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on Design-Builder's compliance with Owner's reasonable request. However, Design-Builder shall not be responsible for the costs of unreasonable or unnecessary safety measures.

3.5 EMERGENCIES In any emergency affecting the safety of persons or property, Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, on account of emergency work shall be determined as a Change Order.

3.6 HAZARDOUS MATERIAL

3.6.1 Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite 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.

3.6.2 If after commencing the Work, Hazardous Material is discovered at the Project, Design-Builder shall be entitled to immediately stop Work in the affected area. Design-Builder shall report the condition to Owner and, if required, the government agency with jurisdiction.

3.6.3 Design-Builder shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction. Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the project. Owner shall be responsible for obtaining all required approvals, if necessary, due to the presence or remediation of any Hazardous Material.

3.6.4 If Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the date of Substantial Completion.

3.6.5 To the extent not caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall indemnify and hold harmless Design-Builder, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to §6.4, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.7 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Design-Builder, Subcontractors, Owner or Others, shall be maintained at the Project by Design-Builder and made available to Owner and Subcontractors.

3.7.1 During Design-Builder's performance of the Work, Design-Builder shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Design-Builder. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Design-Builder if such materials or substances are required by the Contract Documents.

3.7.2 §3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.8 WARRANTY

3.8.1 Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion. The Owner's sole remedy for breach of this warranty shall be the remedies outlined in Article 3.9.

3.8.2 Products, equipment, systems, or materials incorporated in the Work shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems, or materials incorporated in the Work are inconsistent with selection criteria that otherwise would have been followed by Design-Builder, Design-Builder shall assist Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

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

3.8.4 Design-Builder shall collect all written warranties and equipment manuals for the work performed by Design-Builder and its Subcontractors and deliver them to Owner in a format directed by Owner.

3.8.5 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and start-up operations and adjusting and balancing of systems and equipment for readiness.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify Design-Builder in writing. Unless Owner provides written acceptance of the condition, Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Design-Builder or give Design-Builder an opportunity to test or correct Defective Work as reasonably requested by Design-Builder, Owner waives Design-Builder's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall not be extended by corrective work performed by Design-Builder.

3.9.3 If Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the reasonable cost of correcting such deficiencies from payments then or thereafter due Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

3.9.4 Before final payment, at Owner's option and with Design-Builder's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CONFIDENTIALITY Design-Builder shall treat as confidential and not disclose to third-persons, except Subcontractors, Sub-subcontractors, and Design Professional as is necessary for the performance of the Work or use for its own benefit any of Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to Design-Builder or which Design-Builder may acquire in connection with the Work. Owner shall treat as confidential information all of Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to Owner in connection with the performance of this Agreement. The Parties shall each specify those items to be treated as confidential and shall mark them as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

3.11 ADDITIONAL SERVICES Design-Builder shall provide or procure the following Additional services upon the request of Owner. A written agreement between The Parties shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in §3.1 or §3.2.

3.11.1 Surveys, site evaluations, legal descriptions, and aerial photographs;

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

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

3.11.4 Making revisions to design documents after they have been approved by Owner when revisions are due to causes beyond the control of Design-Builder. Causes beyond the control of Design-Builder do not include acts or omissions on the part of Subcontractors, Sub-subcontractors, or Design Professional;

3.11.5 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;

3.11.6 Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of Design-Builder;

3.11.7 The premium portion of overtime work ordered by Owner including productivity impact costs, other than that required by Design-Builder to maintain the Schedule of Work;

3.11.8 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 and construction practice;

3.11.9 Except when Design Professional is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;

3.11.10 document reproduction exceeding the limits provided for in this Agreement;

3.11.11 providing services relating to Hazardous Material discovered at the Worksites;

3.11.12 ;

3.11.13 performing formal commissioning services; and

3.11.14 other services as agreed to by the Parties and identified in an attached exhibit.

3.12 DESIGN-BUILDER'S REPRESENTATIVE Design-Builder shall designate a person who shall be Design-Builder's authorized representative. Design-Builder's Representative is [_____].

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2 Completion of all grading to finished grade and the construction of the main utility services to the site.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, Owner shall provide at Owner's expense and with reasonable promptness:

4.3.1 information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings, public and private utilities, and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, public and private utilities and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Design-Builder in laying out the Work;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Design-Builder which are required for Design-Builder's performance of the Work and under Owner's control.

4.4 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) calendar days after receiving Design-Builder's written request, Owner shall provide Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the record legal title.

4.5 RESPONSIBILITIES DURING DESIGN

4.5.1 Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.5.2 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Owner's Program or any fault or defect in the Professional Services Work, the Owner shall give prompt written notice to the Design-Builder. The failure of the Owner to give such notice shall not relieve the Design Builder of its obligations to fulfill the requirements of the Contract Documents, but

Design Builder is not liable for any increased costs arising from Owner's failure to delay to notify Design Builder of any known fault or defect.

4.6 RESPONSIBILITIES DURING CONSTRUCTION

4.6.1 Owner shall review the Construction Schedule, timely approve milestone dates set forth, and timely respond to its obligations.

4.6.2 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 prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve Design-Builder of its obligations to fulfill the requirements of the Contract Documents, but Design Builder is not liable for any increased costs arising from Owner's failure or delay in notifying Design-Builder of any known fault or defect.

4.6.3 Owner shall have no contractual obligations to Subcontractors, suppliers, or Design Professional.

4.6.4 Owner shall provide insurance for the Project as provided in ARTICLE 10.

4.7 TAX EXEMPTION If in accordance with Owner's direction Design-Builder claims an exemption for taxes, Owner shall indemnify and hold Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's direction.

4.8 ELECTRONIC DOCUMENTS If Owner requires that The Parties exchange documents and data in electronic or digital form, before any such exchange, The Parties shall agree on a written protocol governing all exchanges or a separate agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.9 Owner's Representative is [____]. Owner's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) have the 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 writing in advance.

ARTICLE 5 SUBCONTRACTS

5.1. RETAINING SUBCONTRACTORS Design-Builder shall not retain any Subcontractor or Supplier to whom Owner has a reasonable and timely objection, provided that Owner agrees to increase the Contract Price for any additional costs incurred by Design-Builder as a result of such objection. Owner may propose subcontractors to be considered by Design-Builder. Design-Builder shall not be required to retain any subcontractor to whom Design-Builder has a reasonable objection.

5.2. MANAGEMENT OF SUBCONTRACTORS Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

5.3. CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS

5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by Design-Builder to Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by Owner pursuant to §11.2 or §11.3; and

5.3.1.2. Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing and assumes all rights and obligations of Design-Builder pursuant to each subcontract or supply agreement.

5.3.2. If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

5.4. **BINDING OF SUBCONTRACTORS AND SUPPLIERS** Design-Builder agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its Sub subcontractors and significant Suppliers) to all the provisions of this Agreement and the Contract Documents' applicable provisions to that portion of the Work.

ARTICLE 6 CONTRACT TIME

6.1. **DATE OF COMMENCEMENT** The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below [_____].

6.2. SUBSTANTIAL COMPLETION/FINAL COMPLETION

6.2.1. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended or updated from time to time, subject, however, to other provisions of this Agreement. The Design-Builder will endeavor to meet the Owner's desired completion date. Costs for acceleration or recovery will be included in the updated Control Estimate and shall be paid by the Owner under this Agreement.

6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1. If Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Design-Builder, Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Design-Builder include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

6.3.2. In addition, if Design-Builder incurs additional costs as a result of a delay that is caused by acts or omissions of Owner or Others, changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work, encountering Hazardous Materials unanticipated by Design-Builder or concealed or unknown conditions, delay authorized by Owner pending dispute resolution, and suspension by Owner under §11.1, Design-Builder shall be entitled to an equitable adjustment in the Contract Price subject to §6.4.

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.4. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Owner and Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency.

6.4.1. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. Owner and Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 CONTRACT PRICE

The Contract Price is [] dollars (\$[]) subject to adjustment as provided in ARTICLE 8.

ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim Directive, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1. CHANGE ORDERS

8.1.1. Design-Builder may request or Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The Parties shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Interim Directive has been issued.

8.2. INTERIM DIRECTIVE

8.2.1. Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish

Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations

8.2.2. The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim Directive. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Interim Directive. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work.

8.2.3. If the Parties agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives issued since the last Change Order.

8.3. MINOR CHANGES IN THE WORK

8.3.1. Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. Design-Builder shall promptly inform Owner in writing of any such changes and shall record such changes on the Design-Build Documents and record drawings to be maintained by Design-Builder.

8.4. CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Design-Builder shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this ARTICLE 8.

8.5. DETERMINATION OF COST

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

8.5.1.1. unit prices set forth in this Agreement or as subsequently agreed;

8.5.1.2. a mutually accepted, itemized lump sum; or

8.5.1.3. COST OF THE WORK Cost of the Work as defined by this §8.5.1.3 plus []% for Overhead and []% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:

8.5.1.3.1. Labor wages directly employed by Design-Builder performing the Work;

8.5.1.3.2. Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

8.5.1.3.3. Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy, insofar as such costs are paid to employees of Design-Builder who are included in the Cost of the Work in §8.5.1.3.1 and §8.5.1.3.2;

8.5.1.3.4. Reasonable transportation, travel, and hotel expenses of Design-Builder's personnel incurred in connection with the Work;

8.5.1.3.5. Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.5.1.3.6. Payments made by Design-Builder to Subcontractors for performed Work;

8.5.1.3.7. Fees and expenses for design services procured or furnished by Design-Builder

8.5.1.3.8. Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Design-Builder;

8.5.1.3.9. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design-Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;

8.5.1.3.10. Cost of the premiums for all insurance and surety bonds which Design-Builder is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the cost of the Work;

8.5.1.3.11. Sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable;

8.5.1.3.12. Permits, fees, licenses, tests, and royalties;

8.5.1.3.13. Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work, provided that such did not arise from Design-Builder's negligence-

8.5.1.3.14. Water, power, and fuel costs necessary for the changed Work;

8.5.1.3.15. Cost of removal of all nonhazardous substances, debris, and waste materials;

8.5.1.3.16. Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work

8.5.1.3.17. DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.5.1.3.18. COST REPORTING Design-Builder shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access to Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to requested payment for Cost of the Work. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by Law;

8.5.1.3.19. COST AND SCHEDULE ESTIMATES Design-Builder shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work but does not warrant or guarantee their accuracy.

8.5.1.3.20. Cost of the Work pursuant to §8.4.1.3 is determined net of savings from the change. Design-Builder's Overhead and profit shall be added to any net increase in Cost of the Work. No Overhead and profit shall be applied to any net decrease in the Cost of the Work that is less than ten (10) percent of the Contract Price. Overhead and profit shall be applied to any net decrease ten (10) percent or more. Design-Builder shall maintain a documented, itemized accounting evidencing expenses and savings.

8.5.2. If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Design-Builder, such unit prices shall be equitably adjusted.

8.5.3. If Owner and Design-Builder disagree as to whether work required by Owner is within the scope of the Work, Design-Builder shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations. If Owner issues a written order for Design-Builder to proceed, Design-Builder shall perform the disputed work and Owner shall pay Design-Builder fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.6. CHANGES NOTICE For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, Design-Builder shall give Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed.

Thereafter, Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Design-Builder's claim no later than fourteen (14) Days after receipt of Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

8.7. INCIDENTAL CHANGES Owner may direct Design-Builder to perform incidental changes in the Work upon concurrence with Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 9 LEFT BLANK INTENTIONALLY

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1. INDEMNITY

10.1.1. To the fullest extent permitted by law, Design-Builder shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property required to be insured under §10.3, including reasonable attorneys' fees, costs, and expenses that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Design-Builder shall not be required to indemnify or hold harmless the Indemnitees for any negligent or intentionally wrongful acts or omissions of the Indemnitees. Design-Builder shall be entitled to reimbursement of any defense costs paid above Design-Builder's percentage of liability for the underlying claim to the extent provided for by the subsection below.

10.1.2. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design-Builder, its officers, directors, or members, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §10.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. Before commencing the Work and as a condition for payment, Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

10.2.1.1. Employers' Liability Insurance

- (a) \$[] bodily injury by accident per accident
- (b) \$[] bodily injury by disease policy limit
- (c) \$[] bodily injury by disease per employee

10.2.1.2. Business Automobile Liability Insurance per accident \$[].

10.2.1.3. Commercial General Liability Insurance

- (a) Per occurrence \$[]
- (b) General aggregate \$[]
- (c) Products/completed operations aggregate \$[]
- (d) Personal and advertising injury limit \$[]

10.2.2. Employers' Liability, Business Automobile Liability, and Commercial General Liability coverage required under §10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.3. Design-Builder shall maintain in effect all insurance coverage required under §10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, Owner may, after providing 10 days written notice and upon Design-Builder's failure to cure during that 10 day period, purchase such coverage and charge the expense to Design-Builder, or terminate this Agreement.

10.2.4. To the extent commercially available to Design-Builder and its current insurance company, insurance policies required under §10.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Design-Builder shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.3. PROPERTY INSURANCE

10.3.1. , Before starting the Work, Owner shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Design-Builder, Subcontractors, Sub subcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

10.3.1.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

10.3.1.2. damage resulting from defective design, workmanship, or material;

10.3.1.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings,

plant, or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project;

10.3.1.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

10.3.1.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

10.3.1.6. physical loss resulting from Terrorism.

10.3.2. Owner obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation in favor of the Design-Builder, Subcontractors, Suppliers, Sub subcontractors and Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Owner shall provide a copy of the property policy or policies obtained in compliance with §10.3.1.

10.3.3. If Owner elects not to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §10.3.1, then Owner shall give written notice to Design-Builder and the Design Professional before the Work is commenced. Design-Builder may then provide insurance to protect its interests and the interests of the Design-Builder, Subcontractors, Suppliers, and Sub subcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

10.3.4. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub subcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

10.3.5. To the extent of the limits of Design-Builder's CGL specified in § 10.2.1, Design-Builder shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.6. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 until the Date of Final Completion.

10.4. OWNER'S INSURANCE

10.4.1. BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

10.4.2. OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of

this Agreement, including, without limitation, loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

10.5. LIMIT OF LIABILITY. Owner agrees that to the fullest extent permitted by law, the Design-Builders total liability to Owner for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Design Professional's negligence, errors, omissions, strict liability, breach of contract or breach of warranty (Owner's Claims) shall not exceed \$500,000 for settlement or satisfaction of Owner's Claim.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1. SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1. Owner may order Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

11.2. NOTICE TO CURE A DEFAULT

11.2.1. If Design-Builder persistently fails perform its obligations under this Agreement, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards Laws or orders of any public authority having jurisdiction or is otherwise guilty of a material breach of a provision of this Agreement, Design-Builder may be deemed in default.

If Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then Owner shall give Design-Builder a second notice to correct the default within a three (3) Day period.

11.2.2. After receiving Owner's written notice, if Design-Builder fails to promptly commence and continue satisfactory correction of the default, then Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to Design-Builder; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to Design-Builder but shall give o Design-Builder prompt notice.

11.3. OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1. TERMINATION BY OWNER FOR DEFAULT Upon expiration of the second notice for default period pursuant to §12.2 and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Design-Builder's failure to cure, including the costs to complete the Work and reasonable attorneys' fees, exceed the GMP, Design-Builder shall be liable to Owner for such excess costs. If Owner's costs are less than the GMP, Owner shall pay the difference to Design-Builder. If Owner exercises its

rights under this section, upon the request of Design-Builder, Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by Owner.

11.3.2. If Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if Design-Builder or Design-Builder's trustee rejects the Agreement or, if a default occurs and Design-Builder is unable to give adequate assurance of required performance; or (c) Design-Builder is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.3. Owner shall make reasonable efforts to mitigate damages arising from Design-Builder's default and shall promptly invoice Design-Builder for all amounts due.

11.4. TERMINATION BY OWNER FOR CONVENIENCE If Owner terminates this Agreement other than as set forth in §11.2, Owner shall pay Design-Builder for all professional services and Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs.

11.4.1. Owner shall also pay to Design-Builder fair compensation, either by purchase or rental at the election of Owner, for all equipment retained. Owner shall assume and become liable for obligations, commitments, and unsettled claims that Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, Design-Builder shall cooperate with Owner by taking all steps necessary to accomplish the legal assignment of Design-Builder's rights and benefits to Owner, including the execution and delivery of required papers.

11.5. TERMINATION BY DESIGN-BUILDER

11.5.1. Seven (7) calendar days' after Owner's receipt of written notice from Design-Builder, Design-Builder may terminate this Agreement for any of the following reasons: if the Work has been stopped for at least thirty (30) Day period through no fault of the Design-Builder: (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of Design-Builder, materials are not available; (c) Work is suspended by Owner for Convenience;

11.5.2. In addition, upon seven (7) Days written notice to Owner and an opportunity to cure within three (3) Days, Constructor may terminate this Agreement if Owner: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project ;(b) assigns this Agreement over Design-Builder's reasonable objection; (c) fails to pay Design-Builder in accordance with this Agreement and Design-Builder stopped Work accordingly; or (d) otherwise materially breaches this Agreement.

11.5.3. Upon termination by Design-Builder in accordance with §11.5.1, Design-Builder shall be entitled to recover from Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs, lost profits on uncompleted work and reasonable damages. In addition, Design-Builder shall be paid an amount calculated as set forth in §**Error! Reference source not found.** or **Error! Reference source not found.**

ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement.

12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

12.3. MEDIATION If direct discussions pursuant to §12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §**Error! Reference source not found.**, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties, or if the parties cannot agree, pursuant to the rules of the AAA. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

12.4. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below.

12.4.1. LITIGATION

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project

If not indicated, then litigation is default as opposed to arbitration.

12.4.2. VENUE The Project location shall serve as the venue.

12.5. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

12.6. LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Design-Builder that Design-Builder may have under lien laws.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of The Parties and not for the benefit of any third party.

13.2. ASSIGNMENT Neither Owner nor Design-Builder shall assign its interest in this Agreement its right to payment or claims under this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall

assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party. Any assignment in violation of this provision shall be null and void.

13.3. GOVERNING LAW The Laws of North Dakota shall govern this Agreement.

13.4. SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5. NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service

13.6. NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13.7. TITLES AND GROUPINGS The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.8. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement;
- (b) Owner's Program;
- (c) Owner-provided information pursuant to §3.6.3 and other Owner information identified as intended to be a contract document;
- (d) The Design Development Documents upon Owner approval pursuant to §3.1;
- (e) The Construction Documents upon Owner approval under §3.1;
- (f) Change Order, Interim Directives, and amendments issues in accordance with this Agreement.
- (g) Other: [_____].

14.2. ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by Owner pursuant to §2.3.17 and §3.1.3 in order of the most recently approved; (d) information furnished by Owner pursuant to §4.1 or designated as a contract document in §14.1; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this

Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

OWNER: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

DESIGN-BUILDER: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

DRAFT