

PROJECT MANUAL

FOR THE

**HERITAGE RANCH COMMUNITY SERVICES DISTRICT
4870 HERITAGE ROAD
PASO ROBLES, CA 93446**

PHOTOVOLTAIC (PV) SYSTEM PROJECT

SEPTEMBER 2019

CERTIFICATION

In accordance with the provisions of Section 6735 of the Business and Professions Code of the State of California, these specifications have been prepared by or under the direction of the following Professional Engineers licensed in the State of California.

Steven G. Tanaka, PE, License #C049779



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PART I

NOTICE, PROPOSAL AND AGREEMENT FORMS

HERITAGE RANCH COMMUNITY SERVICES DISTRICT

PHOTOVOLTAIC (PV) SYSTEM PROJECT

NOTICE INVITING PROPOSALS/REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN that the HERITAGE RANCH COMMUNITY SERVICES DISTRICT (Owner or District) hereby requests Design-Build proposals for the Owner's Photovoltaic (PV) System Project. Proposals must be received at:

WALLACE GROUP
612 CLARION COURT
SAN LUIS OBISPO, CA 93401

until Tuesday October 22, 2019, at 3 pm (pacific standard time), or such later date as may be set by Addendum, at above mentioned time and address. Once received, proposals will be evaluated by Owner, and Owner may conduct interviews to further assess merits of the Design-Build Team. A summary of the Work is as follows:

- BASE PROPOSAL OF ~437 KW DC OF PV AT TWO DISTRICT SITES
- ADD-ALTERNATE – OPTION 1 OF ~50 KW DC AT 6 ADDITIONAL SITES
- ADD-ALTERNATE – OPTION 2 FOR MAINTENANCE AND CLEANING SERVICES (for base proposal only)

as specified herein and as further described in the Request for Proposals (RFP).

LOCATION OF THE WORK - The work is located at Heritage Ranch, on District-owned properties, 4870 Heritage Road, Heritage Ranch, CA, west of the City of Paso Robles near Lake Nacimiento.

AWARD OF CONTRACT- In accordance with California Government Code §4217.10, the OWNER intends to award a contract **to the selected design-build team/proposal, that best suits and meets the District's Project Objectives and provides the greatest overall value to the District.** Proposals will be based on merits, on a qualifications-based (QBS) approach, with consideration of overall Project costs. The District will conduct interviews with a short-list of the top three DB teams, and will enter into negotiations with the top ranked DB team. Refer to the RFP for further details.

FORM OF THE PROPOSAL - DB firms must submit proposals on the proposal bid forms provided, and shall follow all instructions set forth in the RFP. Incomplete proposals may not be considered by the District. A **non-mandatory** pre-proposal conference is scheduled for Monday, September 30, 2019, at 9:00 am, **at Owner's Administrative Office, 4870 Heritage Road, Paso Robles (Heritage Ranch), CA.** Prospective DB teams may contact Owner's Consultant Steven Tanaka, Wallace Group, at (805) 544-4011 for additional information. Proposers are encouraged to attend and participate in the conference. Owner will transmit to all prospective Proposers of record such Addenda as Owner considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Proposers are advised that the District will receive questions pertaining to this RFP until 5 pm, October 7, 2019, and will respond to such questions no later than 5 pm, October 14, 2019. Should

questions warrant the issuance of an addendum, such addenda will be issued no later than 5 pm, October 14, 2019. All questions shall be submitted via email to Steven Tanaka, Wallace Group, at stevent@wallacegroup.us. Questions and responses to questions will be provided to all DB teams listed on the pre-proposal meeting attendance sheet.

Site Visits: A site tour/visit will be conducted immediately following the pre-proposal meeting, to allow proposers the opportunity to complete site visits. Proposers not able to attend this 9/30/19 meeting/site visit may schedule one site visit (one appointment per DB team), to be scheduled and coordinated with District staff. Contact Steven Tanaka, Wallace Group, at (805) 544-4011 to coordinate such additional site visits.

PERFORMANCE SECURITIES – The successful DB team will be required to furnish a payment bond and faithful performance bond in the full amount of the Contract price, and insurance with certificates and endorsements of insurance, as provided in the Contract Documents. The required bonds must be provided only by a surety insurer who is duly admitted by the Insurance Commissioner of the State of California.

DB CONTRACTOR LICENSING - In accordance with the provisions of California Public Contract Code Section 3300, Contractor(s) shall possess a valid California State contractor licenses for corresponding disciplines at the time of proposal issuance. Proposers shall state what licenses are required, and shall submit proof of licensure with the California State Licensing Board with the Proposal. Failure to possess such licenses shall render the Bid as non-responsive and shall act as a bar to award of the Contract to any bidder not possessing said license at the time of award. In the event of dispute over classification of the license required, the opinion of the California State License Board shall prevail.

WAGE RATE REQUIREMENTS - In accordance with the provisions of California Labor Code Sections 1770,1773, 1773.1, 1773.6 and 1773.7 as amended, the Director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773 for the locality in which the work is to be performed. A copy of said wage rates is on file at the office of the OWNER. It shall be mandatory upon the contractor to whom the work is awarded and upon any subcontractor under the contractor to pay not less than said specified rates to all workmen employed by them in the execution of the work.

DB CONTRACTOR REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS – In accordance with California Labor Code Section 1725.5, DB Contractors and Subcontractors (as defined by California Labor Code Section 1722.1) bidding on Public Works contracts in California shall be registered with the Department of Industrial Relations. DB Contractor shall verify that this requirement has been met, prior to award of Contract.

AGREEMENT TO ASSIGN - In accordance with Section 4552 of the California Government Code, the DB team shall conform to the following requirements: In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act 15 U.S.C. 15, or under the Cartwright Act, Chapter 2.

DEPOSIT OF SECURITIES IN LIEU OF RETAINAGE - The DB Contractor may elect to receive 100 percent of payment due under the Contract Documents from time to time, without retention of any portion of the payment by the OWNER, by depositing securities of equivalent value with the OWNER in accordance with the provisions of Section 20300 of the California Public Contract Code. Such securities, if deposited by the Contractor, shall be valued by the OWNER, whose

decision on valuation of the securities shall be final. Securities eligible for investment under this provision shall be limited to those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit.

The successful DB team must ensure that employees and applicants for employment are not discriminated against on the basis of age, color, race, national origin, ancestry, religion, sex, sexual preference, marital status, and shall comply with the Americans with Disabilities Act.

Date: 9/20/2019

OWNER: Scott Duffield
HERITAGE RANCH COMMUNITY SERVICES DISTRICT

END OF NOTICE INVITING PROPOSALS

REQUEST FOR PROPOSALS

**HERITAGE RANCH COMMUNITY SERVICES DISTRICT
4870 HERITAGE ROAD
PASO ROBLES, CA 93446**

PHOTOVOLTAIC (PV) SYSTEM PROJECT

**REQUEST FOR PROPOSALS
HERITAGE RANCH COMMUNITY SERVICES DISTRICT
PHOTOVOLTAIC (PV) SYSTEM PROJECT**

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REQUEST FOR PROPOSALS

HERITAGE RANCH COMMUNITY SERVICES DISTRICT PHOTOVOLTAIC (PV) SYSTEM PROJECT

ARTICLE 1 – DEFINITIONS; RFP DOCUMENTS

1.01 *Definitions*

- A. Terms used in this Request for Proposals (RFP) have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms have the meanings indicated below:
1. RFP Documents: This Request for Proposals; the RFQ Documents; and any forms, Project information, technical information, site information, budget information, proposed Contract Documents, or other documents issued with or incorporated by the RFP.
 2. RFQ Documents: The Advertisement or Invitation, Request for Qualifications, and any forms, Project information, technical information, site information, budget information, proposed Contract Documents, or other documents issued with or incorporated by the RFQ.
 3. Proposer: An entity that submits a Proposal to Owner.
 4. Statement of Qualifications: The document submitted by a Proposer in response to the RFQ, including any completed forms, attachments, and exhibits.
- B. In addition to terms specifically defined, terms with initial capital letters in the RFP include references to identified articles and paragraphs, and the titles of other documents or forms.

1.02 *Obtaining and Using RFP Documents*

- A. The RFP Documents may be downloaded from the District's website, www.heritageranchcsd.ca.gov, or such documents can be emailed by contacting Steven Tanaka, Wallace Group, at (805) 544-4011 or stevent@wallacegroup.us. If the RFP documents are downloaded from the District's website, and you desire to be placed on the planholders' list, you must contact Steven Tanaka, Wallace Group, at the above telephone and/or email address in order to ensure you receive updates, addenda and other important information pertaining to the Project. Owner will not assume any responsibility for prospective proposers not following these instructions. Hard copies of RFP documents will not be made available to prospective proposers.
- B. Proposers must use complete sets of RFP Documents in preparing the Proposal. Owner will not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of RFP Documents.
- C. Copies of RFP Documents available on the above terms are only for the purpose of obtaining Proposals and do not confer a license or grant to Proposers for any other use.

ARTICLE 2 – PRE-PROPOSAL CONFERENCE

2.01 *Date, Location, and Terms of Pre-Proposal Conference*

- A. A non-mandatory pre-Proposal conference will be held at the date, time and location stated in the Notice Inviting Proposals. Representatives of Owner will be present to discuss the Project.

ARTICLE 3 – PROPOSER’S REPRESENTATIONS

3.01 *Representations: It is the responsibility of each Proposer before submitting a Proposal to:*

- A. Examine and carefully study the RFP Documents, and any data and reference items identified in the RFP Documents.
- B. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Become familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Note: District does not have reports of explorations and tests of subsurface conditions at or adjacent to the Sites. It is the responsibility of the successful DB team to conduct subsurface explorations the DB team deems necessary for the Work. Such services shall be included in the Proposed Fees for the PV Project, and no additional compensation will be provided to the DB Team therefore.
- E. Carefully study all available: drawings of physical conditions relating to existing surface or subsurface structures at the Sites, if any, that Owner has identified or made available to Proposer, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that Owner has identified or made available to Proposer, especially with respect to Technical Data in such reports and drawings
- F. Consider the information known to Proposer itself, and to members of Proposer’s design-build team; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the RFP Documents; and the Site-related reports and drawings (if any) identified in the RFP Documents or otherwise made available to Proposer, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the project design; (3) the means, methods, techniques, sequences, and procedures of construction to be employed by Proposer; and (4) Proposer’s safety precautions and programs.
- G. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Proposal no further examinations, investigations, explorations, tests, studies, or data are necessary for the preparation of its Proposal for performance of the Work at the prices stated and within the times required, and in accordance with the other terms and conditions of the RFP Documents.
- H. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the RFP Documents.

- I. Promptly give Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer discovers in the RFP Documents, and confirm that the written response from Owner is acceptable to Proposer.
- J. Determine that the RFP Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- K. Agree that the submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of this Article, that without exception the Proposal and all prices in the Proposal are premised upon performing and furnishing the Work required by the RFP Documents.

ARTICLE 4 – EXAMINATION OF SITE AND SITE-RELATED DOCUMENTS; OWNER’S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 *Site and Other Areas*

- A. The Sites are identified in the RFP Documents. By definition, the Sites include rights-of-way, easements, and other lands furnished by Owner for the use of the Design-Builder. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, will be made available by the Owner. DB Contractor shall coordinate with District staff for suitable construction and staging areas. Refer to the Technical Specifications for additional information pertaining to Contractor's storage and laydown areas.

4.02 *Existing Site Conditions*

- A. Subsurface and Physical Conditions; Hazardous Environmental Conditions.
 - 1. The Supplementary General Conditions identify:
 - a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
 - b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
 - c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
 - d. Technical Data contained in such reports and drawings.
 - 2. Owner will make PDF copies of available reports and drawings referenced above available to any Proposer on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Proposer is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary General Conditions. Proposer is responsible for any interpretation or conclusion Proposer draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
 - 3. If the Supplementary General Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply. The DB Team shall provide necessary services to perform the Work, as described in the Technical Specifications and these Contract Documents.

- B. *Adequacy of Data*: Provisions concerning responsibilities for the adequacy of data furnished to prospective Proposers with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the RFP Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Proposers with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 *Site Visit and Testing by Proposers*

- A. Refer to Notice Inviting Proposals.
- B. Proposer shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

4.04 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.05 *Other Work at the Site*

- A. Reference is made to Article 10 of the Supplementary General Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these RFP Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Proposer access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – INTERPRETATIONS AND ADDENDA

- 5.01 All questions about the meaning or intent of the Proposal Documents are to be directed to Owner's Consultant in writing (see Notice Inviting Proposals). Oral and other interpretations or clarifications will be without legal effect.
- 5.02 Addenda may be issued to clarify, correct, or change the Proposal Documents as deemed advisable by Owner.

ARTICLE 6 – TECHNICAL PROPOSAL

6.01 *Proposal Submission Requirements. Submit the following with the proposal:*

- A. Six (6) hard copies of the Proposal, plus one PDF on a thumb or jump drive.
- B. All Proposal Sheets

- C. Safety Program and Loss Experience for last three years (IIPP, OSHA 300 log, Fall Protection Training, etc.)
- D. Construction Schedule, Overall Project Schedule
- E. Product Data Sheets (see Part 3 of Technical Specifications)
- F. All information listed in Article 6.02 Proposal Format.
- G. Also provide information listed in Article 12.01.

6.02 *Proposal Format*

1. To Assist Owner's review of proposals, arrange proposals per the below suggested format and order. Proposals shall be brief, and shall not include an abundance of irrelevant information.
 - a. Letter of Transmittal. Provide a brief transmittal letter (2 pages maximum) transmitting the Proposal to the District.
 - b. Table of Contents.
 - c. Section 1. Project Understanding and Approach. Provide your team's understanding and approach to the overall project. Discuss issues and concerns, and express your ideas and methodology on how best to approach and execute the project to meet the District's project goals and objectives.
 - d. Section 2. Project Team/Qualifications. Provide organization chart showing the proposed team, team organization/lines of communication, and team member qualifications germane to this project. Clearly state your proposed project manager and corresponding qualifications. Differentiate between Overall Project Manager, and Project Manager during construction, if different team members. Include all subconsultants as part of the proposed team, describe their corresponding qualifications germane to the Project, and your past working relationships with each subconsultant. Full resumes shall be placed in Appendix A.
 - e. Section 3. Relevant Project Experience. Provide your team's relevant project experience as it relates to the nature of this project, including the experience of proposed subconsultants. Include projects of similar nature, magnitude and complexity to this project. Provide the year(s) the Work was performed, and identify key team members and their roles on the project. Projects listed should be specifically relevant to key aspects of the District's Project. Provide three references for projects/project experience described in this Section. At least one of these references must be for a project managed by the proposed Project Manager, and at least one of the references must be for a public agency.
 - f. Section 4. Scope of Services/Contract Exceptions. Provide a detailed scope of services for the project, embellishing upon the RFP requirements, District's Goals and Objectives, and requirements in the Technical Specifications. Provide a subsection for any proposed exceptions to the District's Agreement for Services (Owner/DB Team Contract).

- g. Section 5. Project Schedule. Provide a detailed project schedule, in graphic format, along with written explanation of assumptions, or specific details, issues or concerns regarding the proposed schedule. Show graphically and clearly indicate all schedule components, those schedule items for District and agency review, permitting, and other items as deemed necessary. Include in the schedule all anticipated time allotments for agency reviews, public participation, and other schedule provisions. Clearly state all assumptions and basis for the proposed schedule.
- h. Section 6. Financial Resources. Provide information on DB team's financial strength and integrity to complete Project, and including years in business. Provide for DB Contractor, financial audit report of most recent complete year.

6.03 *Technical Proposal Criteria*

A. Proposer shall submit a Technical Proposal that meets the following criteria:

- 1. Base Project Objective: Each PV system shall be designed to offset no more than 90% of the total energy costs for each account. The District is seeking proposals as part of the Base Proposal, for approximately 437 kW of PV to offset energy costs at two accounts via the Utility’s Net Energy Metering Aggregation (“NEMA”) program, meeting this stated objective. Table 1 summarizes the base proposal objectives:

Table 1

	Estimated kW DC
Sewer Treatment Plant and Office	~128
Water Plant and PS 1 and PS 4	~309
Total	~437

- 2. PV system aesthetics will be a consideration in final selection, and the selected DB team shall present aesthetic considerations in the proposal. DB teams will be required to design PV system to meet the aesthetic aspects included in their corresponding proposal.
 - 3. PV systems shall be designed to meet the technical specification requirements included as Part III Technical Specifications, and considering site constraints at the PV locations shown in Exhibit 1 included at the end of these referenced Technical Specifications.
 - 4. Overall project implementation schedule will be a key factor in the selection of the successful DB team.
- B. Add-Alternate Scope Option 1: The District may consider including the projects in Table 2 at its discretion.

Table 2

	Estimated kW DC
SCADA	~10
Lift Station 2	~12

Lift Station 3	~9
Lift Station 10	~8
Pump Station 6	~6
Lift Station 1	~6
Total	~51

6.04 Add-Alternate Scope Option 2: Provide pricing for the operations and maintenance described in Part 8, for the Base Proposal items only. Refer to the Part III Technical Specifications.

6.05 *Ownership Rights*

- A. An unsuccessful Proposer shall retain an ownership and property interest in the Technical Proposal. Such documents are not intended or represented to be suitable for use or reuse by Owner or others on the Project or on any other project. Any such use or reuse will be at Owner's sole risk and without liability or legal exposure to unsuccessful Proposer, and Owner shall indemnify and hold harmless unsuccessful Proposer from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from any such use or reuse.

6.06 *Deviations from Conceptual Documents*

- A. Technical Proposals may include deviations from the Conceptual Documents provided that such deviations are called to the Owner's attention in a clear, express manner.

6.07 *Evaluation of Technical Proposals*

A. ***Proposals will be evaluated by Owner based on overall merits and meeting Project objectives, with consideration of overall cost. The basis of award of the Project will be based on the Base Proposal Items of Work. Criteria for evaluating and ranking proposals will be as follows:***

1. Proposal: Completeness; Clarity; Addresses issues detailed in RFP and Technical Specifications; Correct number of hard copies and electronic copies; Value added benefits; Reference Checks; etc.
2. Proposer's Finances: Strength; Years in Business; Clarity of audited Financials; Assets sufficient to complete the Project, etc.
3. Engineering: Meets technical requirements of the RFP and Technical Specifications; details that address engineering challenges, etc.
4. Overall project schedule and timeliness of completion.
5. Experience/Qualifications: meets the requirements outlined in the RFP; Provides details of projects similar in scope; Experience working with public agencies, etc.
6. Financial Return: Meets the design criteria of the RFP, and provides the greatest lifetime value/rate of return to the Owner.

ARTICLE 7 – PRICE PROPOSAL

7.01 *Base Price Proposal with Alternates*

- A. Proposers shall submit a Price Proposal on a stipulated price basis for the base price, and include a separate price for each alternate described in the RFP and Contract Documents, and as provided for in the Price Proposal Forms. The price for each alternate will be the amount added to or deleted from the base price if Owner selects the alternate.
- B. In the comparison of Price Proposals, Owner will evaluate Base Proposal costs on a life cycle/rate of return basis. Costs for alternates will be considered for addition to the Contract, at the sole discretion of the Owner.

ARTICLE 8 – PROPOSAL SECURITY - NOT USED (NOT REQUIRED)

ARTICLE 9 – CONTRACT TIMES

9.01 *Completion of the Work*

- A. Proposer shall set forth in the Proposal the time by which Proposer shall achieve Substantial and Final Completion, subject to the restrictions established in Paragraph 2.03 of the Agreement. The Owner will take Proposer's time commitment regarding Substantial and Final Completion into consideration during the evaluation of Proposals, and it will be necessary for the apparent Successful Proposer to satisfy Owner that it will be able to achieve Substantial Completion within the time such Proposer has designated in the Proposal. The Successful Proposer's time commitments will be entered into the Agreement (or incorporated in the Agreement by reference to the specific terms of the Proposal).

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 *Late Completion*

- A. Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – FORMAL REQUIREMENTS

11.01 *Proposal Execution Requirements*

- A. A Proposal by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- B. A Proposal by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- C. A Proposal by an individual shall show the Proposer's name and official address.
- D. A Proposal by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Proposal Form. The official address of the joint venture shall be shown.

- E. All names shall be printed in ink below the signatures.
- F. The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- G. Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.

ARTICLE 12 – SUBCONTRACTORS, DESIGN PROFESSIONALS, SUPPLIERS, AND OTHERS

12.01 *Supplementing the Proposal*

- A. Proposer shall supplement its Proposal by furnishing the names and relevant information regarding key players of the design-build team. Refer to Article 6 of this RFP.
- B. Submit:
 - 1. Experience Qualification sheet with DB Contractor's experience as indicated
 - 2. DB Contractor's Licensing Statement
 - 3. List of Subcontractors

ARTICLE 13 – SUBMITTAL OF PROPOSALS

- 13.01 Proposals, including all their component parts, shall be submitted no later than the date, time and at the location specified in the Notice Inviting Proposals.
- 13.02 A Proposal shall be enclosed in a plainly marked package stating the Project title, and the name and address of Proposer. The Price Proposal shall be included in the package, and shall itself be enclosed in a separate sealed envelope marked "Price Proposal." The Proposal must be accompanied by all other required documents. If a Proposal is sent by mail or other delivery system, the sealed envelope containing the Proposal shall be enclosed in a separate mailing or delivery package plainly marked on the outside with the notation "PROPOSAL ENCLOSED." A mailed Proposal shall be addressed to the location specified in the Notice Inviting Proposals. ELECTRONIC SUBMITTALS (ONLY) OF PROPOSALS SHALL NOT BE ALLOWED.
- 13.03 Proposals received after the date and time prescribed for the opening of Proposals, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Proposer unopened.

ARTICLE 14 – MODIFICATION AND WITHDRAWAL OF PROPOSAL

- 14.01 A Proposal may be withdrawn by an appropriate document duly executed in the same manner that a Proposal must be executed and delivered to the place where Proposals are to be submitted prior to the date and time for the opening of Proposals. Upon receipt of such notice, the unopened Proposal will be returned to the Proposer.
- 14.02 If a Proposer wishes to modify its Proposal prior to Proposal opening, Proposer must withdraw its initial Proposal in the manner specified in Paragraph 16.01 and submit a new Proposal prior to the date and time for the opening of Proposals.
- 14.03 If within 24 hours after Proposals are opened any Proposer files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that

there was a material and substantial mistake in the preparation of its Proposal, that Proposer may withdraw its Proposal. Thereafter, if the Work is rebid, that Proposer will be disqualified from further bidding on the Work.

ARTICLE 15 – OPENING OF PROPOSALS

- 15.01 Proposals will be opened privately. The District will rank proposals based on technical qualifications and merit, with consideration of overall cost.

ARTICLE 16 – PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

- 16.01 All Proposals will remain subject to acceptance for the period of time stated in the Proposal Form, but Owner may, in its sole discretion, release and return any Proposal prior to the end of that period.

ARTICLE 17 – INTERVIEWS WITH PROPOSERS

17.01 *Interviews*

- A. Interviews will be conducted by the District, with the top three ranked DB teams/proposals. DB teams are hereby notified that interviews will be scheduled tentatively for the week of November 5, 2019 (at District's Administration Office). Proposers shall endeavor to maintain schedules available for anticipated interviews during this time.

ARTICLE 18 – EVALUATION OF PROPOSALS

- 18.01 *Technical Proposals:* The procedures applicable to evaluating and scoring the Technical Proposal are set forth in Article 6 of this RFP.
- 18.02 *Price Proposals:* The procedures applicable to evaluating and ranking the Price Proposals are as follows:
- A. Owner will evaluate price proposals with respect to meeting overall project objectives, reasonableness of costs, anticipated life cycle costs, and anticipated rates of return. DB Team selection will not be based solely on pricing. Refer to Notice Inviting Proposals, "AWARD OF CONTRACT".
- 18.03 In evaluating a Proposal, Owner may consider whether the Proposal complies with the RFP and includes any prescribed documents and other data requested in the RFP.
- 18.04 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications, and financial ability of Proposers and proposed engineers, Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals and entities to perform and furnish the Work in accordance with the Contract Documents.

ARTICLE 19 – REJECTION OF ALL PROPOSALS; DISCREPANCIES

- 19.01 Owner reserves the right to reject any or all Proposals, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Proposals. Owner will reject the Proposal of any Proposer that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Proposer purports to add terms or conditions to its Proposal, takes exception to

any provision of the RFP Documents, or attempts to alter the contents of the Contract Documents for purposes of the Proposal, then the Owner will reject the Proposal as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

ARTICLE 20 – AWARD OF CONTRACT

- 20.01 If the Contract is awarded, Owner will award the Contract to the Proposer whose Proposal is in the best interests of the Owner/Project, and pursuant to the procedures set forth in this RFP.
- 20.02 If the contract is awarded, Owner will give Successful Proposer a Notice of Award within 60 days after the day of the Proposal opening.

ARTICLE 21 – BONDS AND INSURANCE

- 21.01 Article 6 of the General Conditions, as may be modified by the Supplementary General Conditions, sets forth Design-Builder’s requirements as to performance and payment bonds and insurance. When the Successful Proposer delivers the executed Agreement to Owner, it must be accompanied by the required Bonds.

ARTICLE 22 – SIGNING OF AGREEMENT

- 22.01 When Owner issues a Notice of Award to the Successful Proposer, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Proposer shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Proposer, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

END REQUEST FOR PROPOSALS

HERITAGE RANCH COMMUNITY SERVICES DISTRICT

PROPOSAL COST SHEETS

Complete all cost sheets, including for Add Alternates 1 and 2. Schedule of prices for construction of the **PHOTOVOLTAIC (PV) SYSTEM PROJECT** in accordance with the Contract Documents.

The receipt of the following addenda to the Specifications is acknowledged:

Addendum No. _____ Date _____ Addendum No. _____ Date _____

Addendum No. _____ Date _____ Addendum No. _____ Date _____

The representations made herein are made under penalty of perjury.

Dated: _____ DB Team/Proposer _____

By: _____

Contractor's License No. & Expiration Date: _____

Title: _____

BASE PROPOSAL

Item No.	Description	Total Price
1	Wastewater Treatment Plant and Office	\$
2	Water Treatment Plant, Pump Station 1, and Pump Station 4	\$

TOTAL PROPOSAL PRICE - ITEMS 1 AND 2 **\$**

TOTAL PROPOSAL PRICE IN WORDS: _____

BASE PROPOSAL DETAILS

Item 1 - Wastewater Treatment Plant and Office

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Mounting Structure				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL BASE PROPOSAL PRICE - Item 1 **\$** _____

Item 2 - Water Treatment Plant, Pump Station 1, and Pump Station 4

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Mounting Structure				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL BASE PROPOSAL PRICE - Item 2

\$ _____

ADD ALTERNATE – OPTION 1

Item No.	Description	Total Price
1	SCADA	\$
2	Lift Station 2	\$
3	Lift Station 3	\$
4	Lift Station 10	\$
5	Pump Station 6	\$
6	Lift Station 1	\$

TOTAL PROPOSAL PRICE - Add Alternate - Option 1 **\$**

TOTAL PROPOSAL PRICE IN WORDS: _____

Item 1 - SCADA

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Structure				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL ADD ALTERNATE 1 PROPOSAL PRICE - Item 1 **\$** _____

Item 2 - Lift Station 2

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Canopy Structure				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL ADD ALTERNATE 1 PROPOSAL PRICE - Item 2 \$ _____

Item 3 - Lift Station 3

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Racking				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL ADD ALTERNATE 1 PROPOSAL PRICE - Item 3 \$ _____

Item 4 - Lift Station 10

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Canopy Structure				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL ADD ALTERNATE 1 PROPOSAL PRICE - Item 4 \$ _____

Item 5 - Pump Station 6

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Racking				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL ADD ALTERNATE 1 PROPOSAL PRICE - Item 5 \$ _____

Item 6 - Lift Station 1

Sub-Item No.	Description	Make and Model	Quantity	Unit Price	Total Price
1	PV Modules				\$
2	Inverters				\$
3	Racking				\$
4	Balance of Materials				\$
5	Construction Labor				\$
6	Professional Services				\$
7	Other:				\$
8	Other:				\$
9	Tax				\$

TOTAL ADD ALTERNATE 1 PROPOSAL PRICE - Item 6 \$ _____

**ADD-ALTERNATE – OPTION 2
OPERATIONS AND MAINTENANCE
(FOR BASE PROPOSAL ONLY)**

Operation and Maintenance for 1 Year

Item No.	Description	Total Price
1	Cleaning	\$
2	Maintenance and Data Collection	\$

TOTAL ADD ALTERNATE 2 PROPOSAL PRICE \$

TOTAL PROPOSAL PRICE IN WORDS: _____

**PROVIDE A COPY OF YOUR FIRM'S PUBLISHED RATES AND CHARGES
FOR ADD ALTERNATE - OPTION 2**

CLEANING

Item No.	Description	Qty	Unit Price per Site per Year	Total Price
1	Wastewater Treatment Plant and Office	2	\$	\$
2	Water Treatment Plant, Pump Station 1, and Pump Station 4	2	\$	\$

TOTAL \$

COMMENTS

MAINTENANCE AND DATA COLLECTION

Item No.	Description	Qty	Unit Price per Site per Year	Total Price
1	Wastewater Treatment Plant and Office	1	\$	\$
2	Water Treatment Plant, Pump Station 1, and Pump Station 4	1	\$	\$

TOTAL **\$**

COMMENTS

EXPERIENCE QUALIFICATIONS

(To Accompany Proposal)

The DB Contractor has been engaged in design-build PV works of similar size and complexity to the Owner's Project, under the present business name, for 5 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 5 years.

The DB Contractor has never failed to satisfactorily complete a contract awarded to him, except as follows:

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm, or authority indicated, and to whom reference is made:

YEAR	TYPE OF WORK	CONTRACT AMOUNT	LOCATION AND FOR WHOM PERFORMED
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Signed: _____

Title: _____

(Same as for signature on proposal)

DB CONTRACTOR'S LICENSING STATEMENT

The undersigned is licensed in accordance with the laws of the State of California providing for the registration of Contractors, including Department of Industrial Relations (DIR) registration requirements mandated by California Labor Code Section 1725.5.

Contractor's License Classification and number: _____

Name of individual contractor (print or type): _____

Signature of Owner: _____

Business address: _____

Business telephone: _____

or

Name of Firm: _____

Business address: _____

Business telephone: _____

Signature, title, and address of members signing on behalf of partnership:

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

or

Name of Corporation: _____

Business address: _____

Corporation organized under the laws of the State of: _____

Signature of the President
of the Corporation

Signature of the Secretary
of the Corporation

Contractor's License number is: _____

The License expiration date is: _____

The representations made herein are made under penalty of perjury.

Authorized Signature of Contractor or Corporation _____

AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
FOR
HERITAGE RANCH COMMUNITY SERVICES DISTRICT
PHOTOVOLTAIC (PV) SYSTEM PROJECT
PROGRESSIVE DESIGN-BUILD

THIS AGREEMENT is by and between _____ (“Owner”) and

_____ (“Design-Builder”).

PROJECT INFORMATION

Project: Heritage Ranch Community Services District, Photovoltaic (PV) System Project

Design-Build Contract: **[name, Owner’s identification number]** (“Contract”)

Owner’s Consultants: i) Tim Holmes, PE, Kenwood Energy, PO Box 692, Kenwood, CA 95452; ii) Steven Tanaka, PE, Wallace Group, 612 Clarion Court, San Luis Obispo, CA 93401. Engineer:

Design-Builder has retained [] (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: Scott Duffield, General Manager, Heritage Ranch Community Services District, 4870 Heritage Road, Paso Robles, CA 93446, (805) 227-6230, scott@heritageranchcsd.ca.gov.
2. Design-Builder’s Authorized Representative: [] **[include mailing and delivery addresses, e-mail address, telephone numbers]**

Owner and Design-Builder further agree as follows:

ARTICLE 1 – THE WORK

- 1.01 *General Description:* Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction of the following: Base proposal of approximately 437 kw DC of PV at two District sites, Heritage Ranch, CA, as described in the RFP, Technical Specifications for the Project. Optional add alternate scope items may be included at District's option.

ARTICLE 2 – CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Design-Builder's attainment of Milestones, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.02 *Contract Times:*

- A. Design-Builder shall complete the Work to substantial completion within [] calendar days of the Effective Date, in accordance with Design-Builder's schedule stated in the accepted Proposal for the Work. Work completion shall be defined by Article 14.06.C. of the General Conditions.

2.03 *Liquidated Damages*

- A. *Construction:* Design-Builder and Owner recognize that time is of the essence as stated in Paragraph 2.01 and that Owner will suffer financial and other losses if the Work is not completed within the times specified in Paragraph 2.02, as such may be revised in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a lawsuit or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Design-Builder shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 2.02.A for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Design-Builder shall neglect, refuse, or fail to complete the remaining Work within 21 calendar days following Substantial Completion, then Design-Builder shall pay Owner \$500 for each day that expires after such until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion, final completion, and Milestones (if applicable) are not additive, and will not be imposed concurrently. Liquidated damages for failing to attain Substantial Completion shall take precedence.

ARTICLE 3 – CONTRACT PRICE

3.01 Contract Price Definitions

A. For purposes of this Agreement, the following definitions apply:

1. **Contract Price**—The money that Owner has agreed to pay Design-Builder for performance and completion of the Work in accordance with the Contract Documents. Contract Price is comprised of the Base Proposal Items, plus optional items if awarded by Owner.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 Submittal and Processing of Payments

- A. Design-Builder shall submit Applications for Payment for processing by Owner in accordance with Article 14 of the General Conditions.

4.02 Progress Payments; Retainage

- A. Per Article 14 of the General Conditions, and as modified by the Supplementary General Conditions. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
- B. 95 percent of the Cost of Work completed (or in the case of a Stipulated Price contract, such percentage of the value of Work completed), with the balance being retainage.
- C. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions. The remaining 5% retention will be released only after satisfactory completion of the punch list of items, and following the 35 day lien release period following date of Notice of Completion.

ARTICLE 5 – INTEREST

5.01 Interest Rate

- A. All amounts not paid when due shall bear interest at the rate of 10 percent per annum, or if applicable at the rate stated in a governing prompt payment statute.

ARTICLE 6 – INSURANCE AND BONDS

6.01 Insurance

- A. Design-Builder and Owner shall obtain and maintain insurance as required by the General Conditions and Supplementary Conditions.

6.02 *Performance, Payment, and Other Bond*

- A. As part of the Work under the Completion Stage, the Design-Builder shall furnish a performance bond and a payment bond, each in an amount equal to the Completion Stage Price as duly established and modified under this Contract, as security for the faithful performance and payment of Design-Builder's obligations under the Completion Stage. These bonds shall be in the form prescribed by the Contract and governed by the provisions of Paragraph 6.01 of the General Conditions. Design-Builder shall also furnish such other bonds as are required by other specific provisions of the Contract.

ARTICLE 7 – DESIGN-BUILDER'S REPRESENTATIONS

7.01 *Representations*

- A. Design-Builder makes the following representations for Owner's reliance:
1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (3) Design-Builder's safety precautions and programs.
 5. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.
 6. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 7. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.

8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 – ACCOUNTING RECORDS

8.01 Maintaining and Preserving Cost Records

- A. Design-Builder shall keep such full and detailed accounts of materials incorporated and labor, services, and equipment utilized for the Work as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to cost-based or time-based compensation or reimbursement of any type or description, including but not limited to direct labor hours, standard rate hours, reimbursable expenses, change order pricing, and the Cost of the Work (if applicable). Design-Builder shall preserve all such documents for a period of three years after the final payment by Owner.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 1. This Agreement (pages 1 to 7 , inclusive).
 2. General Conditions (pages 1 to 59, inclusive).
 3. Supplementary Conditions (pages 1 to 6, inclusive).
 4. Request for Proposals.
 5. Notice Inviting Proposals.
 6. Addenda (numbers [] to []).
 7. Design-Builder's Proposal, Proposal Sheets (basis of compensation), proposed schedule.
 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Performance Bond (in the form attached).
 - b. Payment Bond (in the form attached).
 - c. Work Change Directives.
 - d. Change Orders.
 - e. Record Drawings and Record Specifications.
 9. Other Exhibits to this Agreement (enumerated as follows):

- A. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- B. There are no Contract Documents other than those listed above in this Article 9.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

10.03 Successors and Assigns

- A. Owner and Design-Builder each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract.

10.04 Severability

- A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Design-Builder's Certifications

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 15.05:
 - 1. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [] (which is the Effective Date of the Contract).

OWNER:

DESIGN-BUILDER:

By: _____

By: _____

Title: _____

Title: _____

[If Design-Builder is a corporation, partnership, LLC, or a joint venture, attach evidence of authority to sign. In the case of a joint venture, expand the signature section to accommodate execution of the Agreement by an authorized representative of each joint venturer.]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

[If Owner is a corporation, partnership, or LLC, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.]

[State a license number in those states or other jurisdictions where applicable or required.]

DESIGN-BUILD PERFORMANCE BOND

DESIGN-BUILDER (*name and address*):

SURETY (*name and address of principal place of business*):

OWNER

HERITAGE RANCH COMMUNITY SERVICES DISTRICT
4870 HERITAGE ROAD
PASO ROBLES, CA 934446

DESIGN-BUILD CONTRACT

Effective Date of the Contract:

Amount:

Description (*name and location*):

BOND

Bond Number:

Date (*not earlier than the Effective Date of the Contract*):

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Design-Build Performance Bond to be duly executed by an authorized officer, agent, or representative. **[Note: Provide supplemental execution by any additional parties, such as joint venturers.]**

DESIGN-BUILDER AS PRINCIPAL

SURETY

Design-Builder's Name

Surety's Name

By: _____
Signature

By: _____
Signature (*attach power of attorney*)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Design-Build Contract, which is incorporated herein by reference.

2. If the Design-Builder performs the Design-Build Contract, the Surety and the Design-Builder shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Design-Build Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Design-Builder and the Surety that the Owner is considering declaring a Design-Builder Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Design-Builder, and Surety to discuss the Design-Builder's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Design-Builder, and the Surety agree, the Design-Builder shall be allowed a reasonable time to perform the Design-Build Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Design-Builder Default;

3.2 The Owner declares a Design-Builder Default, terminates the Design-Build Contract, and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Design-Build Contract Price in accordance with the terms of the Design-Build Contract to the Surety, or to a design-builder or contractor selected to perform the Design-Build Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the

Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Design-Builder, with the consent of the Owner, to perform and complete the Design-Build Contract;

5.2 Undertake to perform and complete the Design-Build Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified design-builders or contractors acceptable to the Owner for a contract for performance and completion of the Design-Build Contract, arrange for a contract to be prepared for execution by the Owner and a design-builder or contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design-Build Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Design-Build Contract Price incurred by the Owner as a result of the Design-Builder Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new design-builder or contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional notice from the Owner to the Surety demanding that the Surety perform its

obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Design-Builder under the Design-Build Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Design-Build Contract. Subject to the commitment by the Owner to pay the Balance of the Design-Build Contract Price, the Surety is obligated, without duplication, for:

7.1 the responsibilities of the Design-Builder for correction of defective work and completion of the Design-Build Contract;

7.2 additional legal, design professional, and delay costs resulting from the Design-Builder's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Design-Build Contract, actual damages caused by delayed performance or non-performance of the Design-Builder.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract, and the Balance of the Design-Build Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction where the construction portion of the Project is located, and shall be instituted within two years after a declaration of Design-Builder Default, or within two years after the Design-Builder ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice under this Bond to the Surety, the Owner, or the Design-Builder shall be in writing, and mailed or delivered to the recipient's address as shown in this Bond.

13. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Design-Build Contract Price: The total amount payable by the Owner to the Design-Builder under the Design-Build Contract after all proper adjustments have been made including allowance for the Design-Builder for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Design-Builder is entitled, reduced by all valid and proper payments made to or on behalf of the Design-Builder under the Design-Build Contract.

14.2 Design-Build Contract: The agreement between the Owner and Design-Builder identified as such in this Bond, including all Contract Documents and changes duly made to such Design-Build Contract.

14.3 Design-Builder Default: Failure of the Design-Builder, which has not been remedied or waived, to

perform or otherwise to comply with a material term of the Design-Build Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

14.5 Contract Documents: All the documents that comprise the contract between the Owner and Design-Builder.

15. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

16. Modifications to this Bond are as follows:

DESIGN-BUILD PAYMENT BOND

DESIGN-BUILDER *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER

HERITAGE RANCH COMMUNITY SERVICES DISTRICT
4870 HERITAGE ROAD, PASO ROBLES, CA. 93446:

DESIGN-BUILD CONTRACT

Effective Date of the Contract:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative. **[Note: Provide supplemental execution by any additional parties, such as joint venturers.]**

DESIGN-BUILDER AS PRINCIPAL

SURETY

Design-Builder's Name

Surety's Name

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

1. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, services, materials, and equipment furnished for use in the performance of the Design-Build Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Design-Builder promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, then the Surety and the Design-Builder shall have no obligation under this Bond.

3. If there is no Owner Default under the Design-Build Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Design-Builder and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, services, materials, or equipment furnished for use in the performance of the Design-Build Contract, and tendered defense of such claims, demands, liens, or suits to the Design-Builder and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety's obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants that do not have a direct contract with the Design-Builder,

5.1.1 have furnished a written notice of non-payment to the Design-Builder, stating with substantial accuracy the amount claimed and the name of the party to which the materials were, or equipment was,

furnished or supplied, or for which the labor was done or performed, within ninety (90) days after having last performed labor or services, or last furnished materials or equipment included in the Claim; and

5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

5.2 Claimants who are employed by or have a direct contract with the Design-Builder have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Design-Builder, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.

7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Design-Builder may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Design-Builder under the Design-Build Contract shall be used for the performance of the Design-Build Contract and to satisfy claims, if any, under any design-build performance bond. By the Design-Builder furnishing and the Owner accepting this Bond, they agree that all funds earned by the Design-Builder in the performance of the Design-Build Contract are dedicated to satisfy obligations of the Design-Builder and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Design-Build Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction where the construction portion of the Project is located, or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Design-Build Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Design-Builder shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement where the construction portion of the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted from this Bond and provisions conforming to such statutory or other legal requirement shall be deemed incorporated here. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Design-Builder and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the individual or entity for which the labor or services were done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor,

services, materials, or equipment were furnished for use in the performance of the Design-Build Contract;

4. A brief description of the labor, services, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or services, or last furnished materials or equipment, for use in the performance of the Design-Build Contract;
6. The total amount earned by the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, services, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Design-Builder or with a subcontractor of the Design-Builder to furnish labor, services, materials, or equipment for use in the performance of the Design-Build Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, services, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Design-Build Contract, architectural and engineering services required for performance of the work of the Design-Builder and the Design-Builder's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Design-Build Contract:** The agreement between the Owner and Design-Builder identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Design-Builder as required under the Design-Build Contract, or to perform and complete or comply with the other material terms of the Design-Build Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Design-Builder.

17. Any singular reference to Design-Builder, Surety, Owner, or other party shall be considered plural where applicable.

18. Modifications to this Bond are as follows:

NOTICE OF AWARD

Date: _____, 20 _____

To: _____
(Design-Builder)

Project: HERITAGE RANCH COMMUNITY SERVICES DISTRICT
PHOTOVOLTAIC (PV) SYSTEM PROJECT

You are hereby notified that your bid dated _____, 20_____ for the above Contract has been considered. You are the apparent successful Proposer and have been awarded a contract for:

(Indicate "Total Work", alternates, or sections of Work awarded)

The Contract Price of your contract is _____ Dollars (\$ _____), corresponding to Base Proposal [modify as necessary] ____ in the Contract Documents. You must comply with the following conditions within fifteen (15) calendar days of the date of this Notice of Award, that is, by _____, 20_____.

1. You must deliver to the OWNER three fully executed counterparts of the Agreement including all the Contract Documents.
2. You must deliver with the executed Agreement the Contract Security Bonds as specified in the Request for Proposals, Article 21.
3. You must also deliver certificates of insurance as specified in the Request for Proposals, Article 21.
4. (List other conditions precedent.)

Failure to comply with these conditions within the time specified will entitle the OWNER to consider your Proposal abandoned, and to annul this Notice of Award. Within fifteen (15) calendar days after you comply with these conditions, the OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

By _____
TITLE OF OWNER

Copy to the OWNER'S CONSULTANT

NOTICE TO PROCEED

Date: _____, 20_____

To: _____
(Design-Builder)

Project: HERITAGE RANCH COMMUNITY SERVICES DISTRICT
PHOTOVOLTAIC (PV) SYSTEM PROJECT

You are notified that the Contract Time under the above contract will commence to run on _____, 20 _____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with ARTICLE 2 of the Agreement, the project is to reach Substantial Completion by _____ 20 _____.

The Contract provides for an assessment of liquidated damages of the sum stipulated in Article 2.03 of the Agreement, for each consecutive calendar day after the above established contract completion date that the work remains incomplete.

Before you may start any Work at the site, you must

(add any applicable requirements)

HERITAGE RANCH COMMUNITY SERVICES DISTRICT

By: _____
TITLE

Copy to OWNER'S CONSULTANT

PART II

CONDITIONS OF THE CONTRACT

GENERAL CONDITIONS

SUPPLEMENTARY GENERAL CONDITIONS

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

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STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*: Written or graphic instruments issued by Owner prior to the opening of Proposals which clarify, correct, or change the Request for Qualifications, Request for Proposals, or the proposed Contract Documents, including the Conceptual Documents.
 2. *Agreement*: The written instrument, executed by Owner and Design-Builder, that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents.
 3. *Application for Payment*: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Authorized Representative*: The individual designated by a party to represent it with respect to this Contract, as indicated in the Agreement.
 5. *Change Order*: A document which is signed by Design-Builder and Owner and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 6. *Claim*: A demand or assertion by Owner or Design-Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim.
 7. *Conceptual Documents*: The documents prepared by or for the Owner to describe the Work to be performed, issued to Proposers during the design-builder selection process, and expressly identified in the Agreement.
 8. *Constituent of Concern*: Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other Laws or Regulations regulating,

relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction*: The part of the Work that consists generally of making physical improvements at the Site, and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. *Construction Drawings*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction, and consisting of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by or for Design-Builder. Construction Drawings are not Contract Documents.
11. *Construction Specifications*: Documents prepared by or for Design-Builder, and approved by Owner for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction). Construction Specifications are not Contract Documents.
12. *Construction Subcontract*: A written agreement between Design-Builder and a Construction Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. *Construction Subcontractor*: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Construction Subcontractor for the performance of a part of the Construction, and any delegated Design Professional Services.
14. *Contract*: The entire and integrated written agreement between Owner and Design-Builder concerning the Work.
15. *Contract Documents*: Those items so designated in the Agreement, and which together comprise the Contract.
16. *Contract Price*: The money that Owner has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
17. *Contract Times*: The numbers of days or the dates stated in the Agreement to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
18. *Design-Builder*: The individual or entity with which Owner has contracted for performance of the Work, as designated in the Agreement.
19. *Design Professional Services*: That part of the Work comprised of the furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications,

Design Submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.

20. *Design Agreement*: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
21. *Design Submittal*: A Submittal that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
22. *Effective Date of the Contract*: The date indicated in the Agreement on which the Contract becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer*: The Project Design Professional identified as Engineer in the Agreement, and engaged by Design-Builder to provide engineering and related professional services under a Design Agreement.
24. *Hazardous Environmental Condition*: The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*: Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
28. *Notice of Award*: The written notice by Owner to a Proposer stating that Owner will enter into the design-build contract with the Proposer.
29. *Notice to Proceed*: A written notice by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.
30. *Owner*: The individual or entity with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract.

31. *Owner's Consultant:* An individual or entity with which the Owner has contracted to furnish services (typically including planning, preparation of Conceptual Documents, and advisory services) to Owner with respect to the Project, and which is identified as such in the Agreement.
32. *Owner's Site Representative:* A representative of Owner at the Site, as indicated in Paragraph 10.05.
33. *Project:* The total undertaking to be accomplished for Owner by engineers, consultants, Design-Builder, subcontractors, and others, including planning, study, design, construction, testing, start-up, and commissioning, and of which the Work to be performed under the Contract Documents is a part.
34. *Project Design Professionals:* The Engineer and any other independent entities or individuals, or employees of Design-Builder, engaged by Design-Builder or a Construction Subcontractor to provide Design Professional Services with respect to a portion of the Work.
35. *Proposal:* The documents submitted by Design-Builder in response to the Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
36. *Proposal Amendment:* A Contract Document that is prepared after submittal of Design-Builder's Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Owner and Design-Builder.
37. *Proposer:* An entity that submits a Statement of Qualifications or Proposal to Owner.
38. *Record Documents:* The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
39. *Record Drawings and Record Specifications:* Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Owner by Design-Builder at the completion of the Construction.
40. *Request for Proposals:* The document prepared by or for Owner specifying and describing Owner's objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
41. *Request for Qualifications:* The document prepared by or for Owner requesting that Proposers submit a Statement of Qualifications with respect to their candidacy for selection as Design-Builder.
42. *Schedule of Values:* A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder's Applications for Payment.

43. *Site*: Lands or areas indicated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of Design-Builder.
44. *Statement of Qualifications*: The document submitted by a Proposer in response to the Request for Qualifications, including any completed forms, attachments, and exhibits.
45. *Submittal*: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Owner. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Construction Drawings and Construction Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Construction Drawings and Construction Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Owner or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
46. *Substantial Completion*: The time at which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or the specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.
47. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Construction Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Construction Subcontractor, and any lessor of rental equipment used by Design-Builder or a Construction Subcontractor during Construction at the Site.
49. *Technical Data*: Data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding (a) subsurface conditions at the Site, (b) physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), or (c) environmental conditions at the Site, that are set forth in any geotechnical or environmental report prepared for the Project and relied upon by Design-Builder in agreeing to a price (either stipulated, or a Guaranteed Maximum Price) that includes Construction.
50. *Underground Facilities*: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light,

heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.

51. *Underground Facilities Data*: Information and data shown or indicated in the Contract Documents or otherwise provided to Design-Builder by Owner with respect to existing Underground Facilities at or adjacent to the Site.
52. *Unit Price Work*: Work to be paid for on the basis of unit prices.
53. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
54. *Work Change Directive*: A written directive to Design-Builder, issued on or after the Effective Date of the Contract, signed by Owner, ordering an addition, deletion or revision in the Work.

1.02 *Terminology*

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms that require initial capital letters, but when used in the Contract Documents have the indicated meanings.
- B. *Intent of Certain Terms or Adjectives*:
 1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
 2. The word “defective,” when modifying the word “Construction” refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
 3. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 4. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words “perform” or “provide” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
6. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design-Builder, “provide” is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Design-Builder delivers the executed Agreements to Owner, Design-Builder shall also deliver to Owner such Bonds as Design-Builder may be required to furnish in accordance with Paragraph 6.01.A.
- B. *Evidence of Insurance*: Before any Work is started, Design-Builder and Owner shall each deliver to the other those certificates of insurance that Design-Builder and Owner respectively are required to purchase and maintain in accordance with Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Design-Builder four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract. Owner shall make such original printed record version of the Contract available to Design-Builder for review.

2.03 *Conceptual Documents*

- A. *Design-Builder’s Review of Conceptual Documents*:
 1. Design-Builder acknowledges that the Conceptual Documents furnished by Owner are preliminary and incomplete, and subject to stated limitations and reservations.
 2. Design-Builder shall carefully review, analyze, and verify the contents and suitability of the Conceptual Documents before proceeding with the Work (including but not limited to the Design Professional Services).
 3. Design-Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Design-Builder may discover in the Conceptual Documents, whether during such review or at any later point.
 4. Upon receipt of a report from Design-Builder that there is a conflict, error, ambiguity, or discrepancy in the Conceptual Documents, Owner shall either provide a written interpretation, clarification, or correction to Design-Builder, or authorize Design-Builder to correct or resolve the issue under a Change Order providing an equitable adjustment in Contract Times or Contract Price, or both.

5. Design-Builder shall not proceed with any Work affected by a reported conflict, error, ambiguity, or discrepancy in the Conceptual Documents until the issue is resolved.
- B. Owner shall not be responsible for any deficiency in the Conceptual Documents that Design-Builder does not discover or report to Owner.
- C. Subject to the foregoing review and reporting obligations, Design-Builder may use the Conceptual Documents as a partial basis for performing or furnishing Design Professional Services, including the preparation of Design Submittals such as the Construction Drawings and Construction Specifications, but despite any such use of the Conceptual Documents the Design-Builder nonetheless shall be responsible to Owner for the quality and soundness of the Design Professional Services.

2.04 *Before Starting the Work*

- A. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design-Builder shall submit the following to Owner for Owner's timely review:
 1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. A preliminary schedule of Submittals (including Design Submittals) which will list each required Submittal and the times for submitting, reviewing, and processing each Submittal;
 3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
 4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 *Authorized Representatives*

- A. The Authorized Representative for each party has been designated in the Agreement. A party may change its Authorized Representative at any time by giving notice to the other party of the name, mailing and delivery addresses, e-mail address, and telephone numbers of the new Authorized Representative.

2.06 *Initial Conference*

- A. Within 20 days after the Contract Times start to run, Design-Builder will arrange a conference attended by Owner and Design-Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records, and other matters.

2.07 *Review of Schedules*

- A. Not less than 10 days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design-Builder will arrange a conference attended by Design-Builder, Owner, and others as appropriate to review and discuss the

schedules submitted in accordance with Paragraph 2.04.A. Design-Builder shall have an additional 10 days after the conference to make corrections and adjustments and to complete and resubmit the schedules for Owner's acceptance. No progress payment shall be made to Design-Builder until Design-Builder submits schedules that comply with the following requirements:

1. Design-Builder's progress schedule shall provide an orderly progression of the Work to completion within any specified Milestones and the Contract Times.
2. Design-Builder's schedule of Submittals shall provide a workable arrangement for submitting, reviewing, and processing Submittals in accordance with Article 8.
3. Design-Builder's Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work.

2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner and Design-Builder may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner and Design-Builder shall jointly develop such protocols.
- C. Unless expressly stated otherwise elsewhere in this Contract, Design-Builder shall not be obligated to furnish documents (including but not limited to Construction Drawings, Construction Specifications, or Record Drawings and Record Specifications) to Owner in any executable, native-file format.
- D. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Contract Documents*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to require the design and construction of a functionally complete project (or part thereof).
- C. Design-Builder shall prepare or furnish Construction Drawings and Construction Specifications that are in accord with the Contract Documents and that describe a functionally complete Project (or part thereof) to be constructed in accordance with such Construction Drawings and Construction Specifications, as duly modified.
- D. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- E. Design-Builder will furnish or perform all labor, documentation, services (including professional services), materials, and equipment that may reasonably be inferred from the

Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called, for at no additional cost to Owner.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws or Regulations:*

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design-Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Resolving Discrepancies*

- A. If there is a discrepancy between (1) the Conceptual Documents or other Contract Documents issued with the Request for Qualifications or Request for Proposals and (2) the Proposal, the Proposal will control.
- B. If there is a discrepancy between (1) the Conceptual Documents, other Contract Documents issued with the Request for Qualifications or Request for Proposals, or the Proposal and (2) the Proposal Amendment, the Proposal Amendment will control.
- C. If there is a discrepancy between (1) the Contract Documents and (2) the Construction Drawings and Construction Specifications, the Contract Documents will control unless Design-Builder gave notice of the discrepancy in a Submittal, and Owner approved the Submittal, pursuant to the provisions of Article 8.

3.04 *Ownership and Reuse of Documents*

- A. All documents prepared for or furnished to Owner by Design-Builder pursuant to this Contract (including but not limited to Design Submittals) are instruments of service. With respect to such documents:
 1. Design-Builder shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in the documents.
 2. During the course of the Project, Design-Builder will provide copies of Design Submittals to Owner for purposes of review and comment. Owner may retain copies of such documents for its records.
 3. Owner may use its copy of the Record Drawings and Record Specifications for Owner's purposes in operating and maintaining the constructed facilities.
 4. Upon Owner's termination of this Contract for cause pursuant to Paragraph 15.02, Owner shall receive a limited, non-exclusive license to use any completed Design Submittals in continuing the Project, subject to the limitations in this Paragraph 3.04.

5. The documents prepared or furnished by Design-Builder under this Contract, regardless of ownership, transfer, license, completion status, or termination of the Contract, are for Design-Builder's use, and are not intended or represented to be suitable for use on the Project by Owner or any party other than Design-Builder, or for reuse by Owner or others on extensions of the Project or on any other project, except as otherwise stated in this Contract. Any use or reuse by Owner or others on Owner's behalf will be at Owner's sole risk, and without liability or legal exposure to Design-Builder, the Project Design Professionals, or their subconsultants, and Owner shall indemnify and hold harmless Design-Builder, the Project Design Professionals, and their subconsultants from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from any such use or reuse.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times*

- A. The Contract Times will commence to run on the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Design-Builder shall start to perform the Work as of the Effective Date of the Contract. No Construction shall be done at the Site prior to the Effective Date of the Contract.

4.03 *Progress Schedule*

- A. Owner may rely on the progress schedule established in accordance with Paragraph 2.04, as duly adjusted, in planning and conducting ongoing operations and other work at the Site.
- B. Design-Builder shall adhere to the progress schedule established in accordance with Paragraph 2.04 as it may be adjusted from time to time, as provided below:
 1. Design-Builder shall submit to Owner proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Owner shall accept such adjustments provided that Owner, in planning and conducting ongoing operations and other work at the Site, has not reasonably relied on the schedule element that is proposed to be adjusted. If Owner has so relied, then Owner and Design-Builder shall promptly meet and seek a resolution that addresses the objectives of both parties, or adjust the Contract Price.
 2. Design-Builder shall submit proposed adjustments in the progress schedule that will change the Contract Times (including Milestones) in accordance with the requirements of Paragraph 11.06. Such adjustments may only be made by a Change Order.
- C. *Continuing the Work:* Design-Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design-Builder and Owner may otherwise agree in writing.

4.04 *Delays in Design-Builder's Progress*

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Design-Builder shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

- B. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference within the control of Design-Builder. Delay, disruption, and interference attributable to and within the control of a Project Design Professional, Construction Subcontractor, or Supplier shall be deemed to be delays within the control of Design-Builder.
- C. If Design-Builder's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Design-Builder, and those for which they are responsible, then Design-Builder shall be entitled to an equitable adjustment in Contract Times. Design-Builder's entitlement to such an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design-Builder's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 9); and
 - 4. Acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 9.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Design-Builder shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Design-Builder.
- G. If Design-Builder seeks an adjustment in Contract Price or Contract Times under this paragraph, Design-Builder shall submit a request for a Change Order to Owner within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder will have to comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Design-Builder with a current statement of record legal title and legal description of the lands upon which the

Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws or Regulations.

- C. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of Work, Design-Builder shall promptly settle with such other party by negotiation, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law.
3. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's consultants, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the Construction.

B. *Removal of Debris:* During the performance of the Construction, Design-Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning:* Prior to Substantial Completion, Design-Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design-Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

5.03 *Reference Points*

- A. Design-Builder shall be responsible for laying out the Work and shall protect and preserve reference points and property monuments established by Owner, and shall make no changes or relocations of such reference points or monuments without the prior written approval of Owner. Design-Builder shall report to Owner whenever any reference point or

property monument is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

5.04 *Differing Site Conditions*

- A. Design-Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site (whether discovered during investigation of the Site or during Construction) which differ materially from those indicated in the Contract Documents, or in any Technical Data, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.
- B. Owner will investigate the Site conditions promptly after receiving the notice. Design-Builder shall supplement the notice by promptly submitting to Owner any additional information regarding schedule and cost impacts, and a specific request for a Change Order. Owner shall then make a determination regarding the site condition and the impact, if any, on Contract Price and Contract Times. If the conditions do materially so differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 11.
- C. No request by Design-Builder for an equitable adjustment under this Paragraph 5.04 shall be allowed unless Design-Builder has given the written notice required.
- D. The provisions of this Paragraph 5.04 are not intended to apply to a Hazardous Environmental Condition or Underground Facility uncovered or revealed at the Site.

5.05 *Underground Facilities*

- A. *Procedure for Identifying Underground Facilities:* Promptly after the Effective Date of the Contract, Design-Builder shall review the Underground Facilities Data furnished by Owner and use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site. Design-Builder shall establish and use the Underground Facilities Procedure to aid in the provision of Design Professional Services and the performance of Construction, and to reduce and manage risks associated with Underground Facilities. Such Underground Facilities Procedure shall take into account the Site and the nature of the Project.
 - 1. The Underground Facilities Procedure shall include a plan to keep Underground Facilities information current as Design-Builder proceeds with the provision of Design Professional Services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
 - 2. To manage the potential impact of design changes on Underground Facilities, Design-Builder shall modify or reapply the Underground Facilities Procedure as the design progresses and changes.

- B. *Design-Builder's Responsibilities:* Unless otherwise expressly provided in the Contract, Design-Builder shall have full responsibility for the following; and, subject to the provisions of Paragraphs 5.05.C, D, and E, the cost of all of the following will be included in the Contract Price:
1. Establishing and executing the Underground Facilities Procedure referred to in Paragraph 5.05.A, including updating, modification, and reapplication duties;
 2. Coordinating the Work with the owners (including Owner) of such Underground Facilities, during the provision of Design Professional Services and Construction;
 3. Verifying the actual location of specific Underground Facilities through exposure, as needed for the Design Professional Services;
 4. Complying with applicable state and local utility damage prevention Laws and Regulations during Construction; and
 5. The safety and protection of all existing Underground Facilities at the Site, and repairing any damage to such Underground Facilities resulting from the Construction, subject to the provisions of Paragraph 5.05.D.
- C. *Results of Design-Builder's Execution of Underground Facilities Procedure:* If, during the execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, the Design-Builder identifies an Underground Facility that was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, causing an increase or decrease in the Design-Builder's cost of, or the time required for, providing Design Professional Services or performing the Construction, then Design-Builder shall submit to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the identification of the Underground Facility in question.
- D. *Underground Facility Found During Construction:* If Design-Builder believes that an Underground Facility that is uncovered, exposed, or revealed at the Site during Construction was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and also that such Underground Facility was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, then Design-Builder shall promptly give written notice to Owner, and supplement the notice by submitting to Owner a request for a Change Order seeking an equitable adjustment to the Contract Price or Times under this clause. Such request shall be made within 30 days of the uncovering or revealing of the Underground Facility in question.
1. *Owner's Review:* Owner will investigate the Underground Facility found during Construction promptly after receiving the notice. If Owner concurs with Design-Builder that the Underground Facility that is uncovered, exposed, or revealed at the Site was not shown or indicated in the Underground Facilities Data, or was not shown or indicated with reasonable accuracy, and further was not identified or mapped with reasonable accuracy despite Design-Builder's adequate establishment and execution of the Underground Facilities Procedure referred to in Paragraph 5.05.A, causing an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the actual location, then an equitable adjustment shall be made under this clause and the Contract Price or Times

modified in writing by Change Order in accordance with Article 11. If Owner does not concur with Design-Builder, then Owner shall so indicate in writing, with a specific explanation of the reason for non-concurrence.

2. No request by Design-Builder for an equitable adjustment under Paragraph 5.05.D shall be allowed unless Design-Builder has given the written notice required.
- E. *Inadequate Establishment or Execution of Underground Facilities Procedure:* If Design-Builder does not establish an Underground Facilities Procedure that is (1) adequate for the Site and the nature of the Project and (2) consistent with the guidelines set forth in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," or Design-Builder does not adequately execute a duly established Underground Facilities Procedure, then Design-Builder shall bear all costs associated with the presence of an Underground Facility that was not identified or located with reasonable accuracy, including but not limited to delay, redesign, relocation, and increased Construction costs, if such Underground Facility would have been identified and located with reasonable accuracy by an adequate and properly executed Underground Facilities Procedure that was consistent with ASCE 38.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reliance by Design-Builder on Technical Data Authorized:* Design-Builder may rely on the accuracy of the Technical Data with respect to environmental conditions at the Site.
- B. Design-Builder shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- C. Design-Builder shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Design-Builder, Project Design Professionals, Construction Subcontractors, Suppliers, or anyone else for whom Design-Builder is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- D. If Design-Builder encounters, uncovers, or reveals a Hazardous Environmental Condition (whether during Site investigation or during Construction) whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Design-Builder or anyone for whom Design-Builder is responsible creates a Hazardous Environmental Condition, then Design-Builder shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.16); and (3) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take corrective action, if any, and take such actions as are necessary to permit Owner to timely obtain required permits and provide Design-Builder the written notice required by Paragraph 5.06.E. If Design-Builder or anyone for whom Design-Builder is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- E. Design-Builder shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Design-Builder either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- F. If after receipt of such written notice Design-Builder does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the portion of the Work that is in the area affected by such condition shall be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 9.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Contract Documents or the Technical Data, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Design-Builder's failure to control, contain, or remove a Constituent of Concern brought to the Site by Design-Builder or by anyone for whom Design-Builder is responsible, or to a Hazardous Environmental Condition created by Design-Builder or by anyone for whom Design-Builder is responsible. Nothing in this Paragraph 5.06.H shall obligate Design-Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Design-Builder shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Design-Builder's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due, or until completion of the correction period specified in Paragraph 14.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other specific provisions of the Contract. Design-Builder shall also furnish such other bonds

as are required by the Supplementary Conditions or other specific provisions of the Contract.

- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Design-Builder shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Design-Builder is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Design-Builder shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Design-Builder has failed to obtain a required bond, Owner may exclude the Design-Builder from the Site and exercise Owner’s termination rights under Article 15.
- F. Upon request to either Owner or Design-Builder from any Construction Subcontractor, Project Design Professional, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, the recipient of the request shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Design-Builder shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Design-Builder shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. All insurance required by the Contract to be purchased and maintained by Design-Builder shall be primary and without contribution by insurance maintained by Owner.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly permitted in the Supplementary Conditions.
- E. Design-Builder shall require (a) its Construction Subcontractors and Engineer (and any other Project Design Professional that is an independent individual or entity) to purchase and maintain commercial general liability, automobile liability, workers’ compensation,

employer's liability, professional liability (as applicable), and umbrella or excess liability insurance, and (b) its Construction Subcontractors to purchase and maintain contractor's pollution liability insurance. All such required insurance shall meet the same requirements for the applicable category of insurance established in this Contract for Design-Builder, unless otherwise indicated in the Supplementary Conditions.

- F. Design-Builder shall deliver to Owner, with copies to each additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Design-Builder has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Design-Builder shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if permitted) and deductibles, and evidence of insurance required to be purchased and maintained by Design-Builder's Construction Subcontractors, Engineer, and any other Project Design Professional that is an independent individual or entity. Design-Builder may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- G. Owner shall deliver to Design-Builder, with copies to each additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Design-Builder or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- H. Failure of Owner or Design-Builder to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Design-Builder to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- I. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Design-Builder has failed to obtain and maintain required insurance, Owner may exclude the Design-Builder from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design-Builder or Design-Builder's interests.

- M. The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Design-Builder's Insurance*

- A. *Workers' Compensation and Employer's Liability*: Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance for:
1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design-Builder's employees (by stop-gap endorsement in monopolist worker's compensation states).
 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered*: Design-Builder shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Design-Builder, on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design-Builder's employees.
 2. Claims for damages insured by reasonably available personal injury liability coverage.
 3. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content*: Design-Builder's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Design-Builder shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Design-Builder's contractual indemnity obligations in Paragraph 7.19.
 3. Broad form property damage coverage.
 4. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG

20 37 10 01 (together). If Design-Builder demonstrates to Owner that the specified ISO endorsements are not commercially available, then Design-Builder may satisfy this requirement by providing equivalent endorsements.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, shall not include any of the following:
1. Any modification of the standard definition of "insured contract."
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs.
 4. Any exclusion of coverage relating to earth movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability.
 6. Any limitation or exclusion based on the nature of Design-Builder's work.
 7. Any professional liability exclusion broader in effect than ISO form CG 22 79 07 98.
- E. *Automobile liability:* Design-Builder shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- F. *Umbrella or excess liability:* Design-Builder shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each and every one of the underlying policies. Design-Builder may meet the combined limits of insurance (underlying policy plus applicable umbrella or excess) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy that follows the form of the underlying policy, as specified herein.
- G. *Contractor's pollution liability insurance:* Design-Builder shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design-Builder's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- H. *Additional insureds:* The Design-Builder's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and any individuals or entities identified as required additional insureds in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from

both ongoing and completed operations) on a non-contributory basis. Design-Builder shall obtain all necessary endorsements to support these requirements.

I. *Professional liability insurance:*

1. Design-Builder shall be responsible for purchasing and maintaining professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which Design-Builder is legally liable.
2. If in the performance of this Contract any Design Professional Services, or other professional engineering or similar services, are to be performed by an independent design professional, under direct contract to Design-Builder or at any lower contractual tier, then Design-Builder shall be responsible for assuring that such independent design professional purchases and maintains professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the independent design professional is legally liable.
3. If a Construction Subcontractor at any tier will provide or furnish design, engineering, or other similar professional services under this Contract, as the result of a delegation of professional design responsibilities or otherwise, then Design-Builder shall assure that such Construction Subcontractor purchases and maintains applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable.
4. Any professional liability insurance required under this Contract shall be maintained throughout the duration of the Contract and for a minimum of three years after Substantial Completion. For each claims-made professional liability policy furnished and maintained to satisfy the requirements of this Paragraph 6.03.I, the retroactive date on the policy shall pre-date the commencement of furnishing services on the Project.

J. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:

1. Include at least the specific coverages provided in this Article.
2. Be written for not less than the limits of coverage provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days' prior written notice has been given to Design-Builder. Within 3 days of receipt of any such written notice, Design-Builder shall provide a copy of the notice to Owner and each other insured under the policy.
4. Remain in effect at least until final payment and Design-Builder's departure from the Site (and longer if expressly required elsewhere in this Contract), and at all times thereafter when Design-Builder may be correcting, removing, or replacing defective Construction as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. Provide applicable protection from claims that may arise out of or result from the performance of the Work, whether such performance is by Design-Builder, a Project

Design Professional, any Construction Subcontractor or Supplier, or anyone directly or indirectly retained by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

6.04 *Owner's Liability Insurance*

- A. In addition to the liability insurance required to be provided by Design-Builder, the Owner, at Owner's option and expense, may purchase and maintain Owner's own liability insurance to protect Owner against claims which may arise with respect to the Project.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Design-Builder, and Design-Builder cannot rely upon Owner's liability policies for any of Design-Builder's obligations to the Owner or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Design-Builder shall purchase and maintain builder's risk insurance upon the Construction on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. Include the Owner and Design-Builder as named insureds, and all Construction Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Construction, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Design-Builder.
 - 3. Cover, as insured property, at least the following: (a) the Construction (including but not limited to all buildings, structures, foundations, excavations, underground property, pilings, underground pipes, flues, drains, wiring, cables, and the like) and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into the Construction, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent Construction but which are intended to provide working access to the Site, or to the

Construction, or which are intended to provide temporary support for the Construction, including scaffolding, form work, fences, shoring, lighting, cribbing, falsework, and temporary structures.

4. Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. Extend to cover damage or loss to insured property while in transit.
 7. Allow for partial occupation or use of the Construction by Owner, such that those portions of the Construction that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. Provide for the waiver of claims and waiver of the insurer's subrogation rights, as set forth in Paragraph 6.06.
 9. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. Not include a co-insurance clause.
 11. Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. Include performance/hot testing and start-up.
 13. Be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Construction by Owner, until the Construction is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days' prior written notice has been given to the purchasing policyholder. Within 3 days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Construction prior to Substantial Completion of all the Work as provided in Paragraph 14.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Design-BUILDER) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Construction that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Construction not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

- E. *Additional Insurance*: If Design-Builder elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Design-Builder's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Design-Builder, a Construction Subcontractor, or an employee of Design-Builder or a Construction Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.
- G. *Loss of Use and Delay in Start-up*: Unless otherwise expressly stated elsewhere in this Contract, the Owner is responsible, at its option, for purchase and maintenance of insurance to protect Owner against the loss of use or delays in start-up caused by property damage.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, 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 insureds thereunder, or against any Project Design Professional or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Design-Builder waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Construction; and, in addition, waive all such rights against the Project Design Professionals, their consultants, all Construction Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Design-Builder as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Design-Builder, the Project Design Professionals, and the Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Construction caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. Loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 14.04, after Substantial Completion pursuant to Paragraph 14.03, or after final payment pursuant to Paragraph 14.06.
- C. Any insurance policy maintained by Owner covering any loss, damage, or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that the insured is

allowed to waive the insurer's rights of subrogation against Design-Builder, Project Design Professionals, Construction Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, in a written contract executed prior to the loss, damage, or consequential loss.

- D. Design-Builder shall be responsible for assuring that each Construction Subcontract contains provisions whereby the Construction Subcontractor waives all rights against Owner, Design-Builder, all individuals or entities identified in the Supplementary Conditions as insureds, the Project Design Professionals, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Project.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall maintain such funds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Construction shall be repaired or replaced, the money so received applied on account thereof, and the Construction and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES

7.01 *Design Professional Services*

- A. Design-Builder shall provide the Design Professional Services needed to successfully perform and complete the Work required under this Contract.
- B. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design-Builder under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

7.02 *Construction*

- A. Design-Builder shall perform and furnish the Construction pursuant to the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified.

B. Design-Builder shall keep Owner advised as to the progress of the Construction.

7.03 *Supervision and Superintendence of Construction*

A. Design-Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction.

B. At all times during the progress of Construction, the Design-Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

7.04 *Labor; Working Hours*

A. Design-Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design-Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, Design-Builder may perform the Construction on legal holidays, during any or all hours of the day, and on any or all days of the week, at Design-Builder's sole discretion.

7.05 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified by Owner or in the Construction Drawings or Construction Specifications, and unless specified otherwise shall be new and of good quality. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

7.06 *"Or Equals" and Substitutions*

A. If an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, then during the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may request that Owner authorize the use of other items of material or equipment, or items from other proposed suppliers, by including the proposed items in the proposed Construction Drawings or Construction Specifications, with required notice to Owner that the Submittal contains a variation from the Contract Documents. Owner in its

sole discretion may approve the use of the item if Owner determines that the item is functionally equal to that named and sufficiently similar so that no change in related Work will be required, taking into consideration whether the item:

1. Is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 2. Will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 3. Has a proven record of performance and availability of responsive service; and
 4. Is not objectionable.
- B. *Effect of Owner's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- C. *Substitutes:* During the preparation of the proposed Construction Drawings and Construction Specifications, the Design-Builder may propose a substitute to an item of material or equipment that is required to be furnished by the Contract Documents. Any such proposal shall be made in a transmittal to Owner that is separate from and independent of any Design Submittals. The proposal shall describe the advantages, disadvantages, and changes in Contract Price or Contract Time associated with the proposed substitute. Approval of the proposed substitute shall be at Owner's sole discretion. If approved, the substitute item shall be incorporated in the Construction Drawings and Construction Specifications.
- D. *Design Professional Review:* Before Design-Builder transmits its proposal to Owner, the Project Design Professional that designed the portion of the Work affected by the proposed "or equal" or substitute shall review and approve the proposal.
- E. *Construction Drawings and Construction Specifications:* "Or equal" or substitute proposals with respect to items of material or equipment that are required in the Construction Drawings and Construction Specifications shall be considered proposed modifications of the Construction Drawings and Construction Specifications, and shall be governed by the provisions of Paragraph 8.02.H.

7.07 *Concerning Project Design Professionals, Construction Subcontractors, Suppliers, and Others*

- A. Design-Builder may retain Project Design Professionals, Construction Subcontractors, and Suppliers for the performance of parts of the Work. Such Project Design Professionals, Construction Subcontractors, and Suppliers must be acceptable to Owner.
- B. Design-Builder shall retain specific Project Design Professionals, Construction Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents (including but not limited to the Proposal Amendment) as of the Effective Date.
- C. Prior to entry into any binding Design Agreement, Construction Subcontract, or purchase order, Design-Builder shall submit to Owner the identity of the proposed Project Design Professional, Construction Subcontractor, or Supplier (unless Owner has already deemed such proposed contractual party acceptable, during the bidding process or otherwise). Such

proposed contractual party shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- D. Owner may require the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work solely on the basis of substantive, reasonable objection after due investigation. Design-Builder shall submit an acceptable replacement for the rejected Project Design Professional, Construction Subcontractor, Supplier, or other entity.
- E. If Owner requires the replacement of any Project Design Professional, Construction Subcontractor, Supplier, or other entity retained by Design-Builder to perform any part of the Work, then Design-Builder shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.
- F. No acceptance by Owner of Engineer or of any Project Design Professional, Construction Subcontractor, Supplier, or other entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- G. Design-Builder shall be fully responsible to Owner for all acts and omissions of the Project Design Professionals, Construction Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, just as Design-Builder is responsible for Design-Builder's own acts and omissions.
- H. Design-Builder shall be solely responsible for scheduling and coordinating the services and work of the Project Design Professionals, Construction Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- I. Design-Builder shall restrict all Project Design Professionals, Construction Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating directly with Owner, except in case of an emergency or a matter involving public health, safety, or welfare, or as otherwise expressly allowed herein.
- J. Owner may furnish to any Project Design Professional, Construction Subcontractor, or Supplier, to the extent practicable, information about amounts paid to Design-Builder on account of Work performed for Design-Builder by the requesting party.
- K. Nothing in the Contract Documents:
 - 1. Shall create for the benefit of any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity any contractual relationship between Owner and such third-party individual or entity; nor
 - 2. Shall create any obligation on the part of Owner to pay or to see to the payment of any money due any Project Design Professional, Construction Subcontractor, Supplier, or other third-party individual or entity except as may otherwise be required by Laws and Regulations.

7.08 *Patent Fees and Royalties*

- A. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual

Documents or other Contract Documents for use in the performance of the Construction, and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then Owner has disclosed the existence of such rights to Design-Builder in the Conceptual Documents or other Contract Documents.

- B. To the fullest extent permitted by Laws or Regulations, Design-Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device, except those required by the Contract Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design-Builder and its officers, directors, members, partners, employees or agents, Project Design Professionals, Construction Subcontractors, and Suppliers from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Contract Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.09 *Permits and Utility Charges*

- A. The Contract Documents allocate responsibility for obtaining and paying for specified permits, licenses, certificates of occupancy, and approvals of governmental authorities having jurisdiction over the Work. Each party shall assist the other, when necessary, in obtaining such permits, licenses, certificates, and approvals.
- B. Design-Builder shall pay all charges of utility owners for temporary service to the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work, and for capital costs related thereto.

7.10 *Taxes*

- A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design-Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

- A. Design-Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design-Builder's compliance with any Laws or Regulations.
- B. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design-Builder shall bear all claims, costs, losses, and damages

(including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

- C. Changes in Laws or Regulations that occur after the date on which the Design-Builder committed to the Contract Price (whether by negotiation or making an offer or proposal) and affect the cost or time of performance shall be the subject of an equitable change in Contract Price or Contract Times.

7.12 *Record Documents*

- A. Design-Builder shall maintain the Record Documents in good order, in a safe place at the Site. Design-Builder shall annotate the Record Documents to show all changes and clarifications made (whether in the field or otherwise) during performance of Construction. The Record Documents, as annotated, will be available to Owner for reference. Upon completion of the Construction, Design-Builder shall deliver the Record Documents, as annotated, to Owner.
- B. After receipt and review of the Record Documents from Design-Builder upon completion of Construction, the Owner may comment on any possible inaccuracies. After Owner and Design-Builder collaboratively address any such comments, the Record Documents shall be deemed to be Record Drawings and Record Specifications.
- C. The Record Drawings and Record Specifications are Contract Documents, and are binding upon Design-Builder with respect to its obligations to comply with the Contract Documents, including but not limited to correction period responsibilities and warranty obligations.

7.13 *Safety and Protection*

- A. Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Construction Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of Construction.
- B. Design-Builder shall comply with applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Design-Builder shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design-Builder shall inform Owner of the specific requirements of Design-Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.A.2 or 7.13.A.3 caused, directly or indirectly, in whole or in part, by Design-Builder, any Construction Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Builder.
- F. Design-Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as all the Work is completed, Owner has issued a notice to Design-Builder in accordance with Paragraph 14.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion), and Design-Builder has left the Site.
- G. Design-Builder's duties and responsibilities for safety and protection shall resume whenever Design-Builder or any Construction Subcontractor, Supplier, or other representative returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Safety Representative*

- A. Design-Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.15 *Hazard Communication Programs*

- A. Design-Builder shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design-Builder is obligated to act to prevent threatened damage, injury or loss. Design-Builder shall give Owner prompt written notice if Design-Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design-Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.17 *Post-Construction Phase*

- A. Design-Builder shall:
 1. Provide assistance in connection with the start-up and testing of any equipment or system.
 2. Assist Owner in training staff to operate and maintain the Work.

7.18 *Design-Builder's General Warranty and Guarantee*

- A. Design-Builder warrants and guarantees to Owner that Design-Builder will perform and complete the Construction as required by the Contract Documents, and that all Construction will be in accordance with the Contract Documents, the Construction Drawings, and the Construction Specifications (as duly modified in accordance with the Contract), and will not be defective.
- B. Design-Builder's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. Abuse, modification or improper maintenance or operation by persons other than Design-Builder, Construction Subcontractors, or Suppliers or any other individual for whom Design-Builder is responsible; or
 - 2. Normal wear and tear under normal usage.
- C. None of the following will constitute an acceptance by Owner of Work that is not in accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in accordance with the Contract Documents, unless expressly stated otherwise in writing:
 - 1. Observations by Owner;
 - 2. The making of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Submittal;
 - 6. Any inspection, test, or approval by others; or
 - 7. Any correction of defective Construction by Owner.

7.19 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner, Owner's Consultant, and their officers, directors, members, partners, employees, agents, consultants, and subcontractors, from losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
- B. In any and all claims or actions against Owner, Owner's Consultant, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Design-Builder, a Project Design Professional, any Construction Subcontractor, any Supplier, any individual or entity directly or indirectly employed or retained by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation

under Paragraph 7.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, a Project Design Professional, or any Construction Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Design-Builder under Paragraph 7.19.A shall not extend to the liability of Owner's Consultant, other consultants or design professionals of Owner, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 8 – SUBMITTALS

8.01 *Design-Builder's Preparation of Submittals*

- A. Design Submittals shall be prepared by Project Design Professionals, on behalf of Design-Builder.
- B. The appropriate Project Design Professional shall review and approve each Submittal (including but not limited to all Design Submittals), other than those Submittals not involving technical or engineering matters, before Design-Builder's transmittal of such Submittal to Owner. Such review and approval shall account for the following, as appropriate:
 - 1. That any items covered by such Submittal will, after installation or incorporation in the Construction, comply with the information and requirements in the Contract Documents and the Construction Drawings and Construction Specifications, as duly modified, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified.
 - 2. That if the Submittal includes any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, or any proposed variation from the requirements of such documents, such proposed modification or variation is acceptable based on the standards of the engineering profession (or other applicable design profession), and if implemented will be supported by signing or sealing by a licensed design professional, as necessary.
- C. Before Design-Builder's transmittal of a Submittal to Owner, the Design-Builder shall, as applicable:
 - 1. Review and coordinate the Submittal with other Submittals and with the requirements of the Work, the Contract Documents, the Construction Drawings, and the Construction Specifications, as duly modified;
 - 2. Determine and verify all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal, and confirm that the Submittal is complete with respect to all related data included in the Submittal;
 - 3. Determine and verify the suitability of proposed materials and equipment with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation; and

4. Determine and verify all information relative to Design-Builder's responsibilities for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
- D. Design-Builder shall give Owner specific written notice of any proposed modification of the Contract Documents, Construction Drawings, or Construction Specifications, and any variations that a Submittal may have from the requirements of the Contract Documents, Construction Drawings, and Construction Specifications, as duly modified. This notice shall be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Submittal in drawing form, by a specific notation made on the drawing itself.
- E. Each Submittal shall bear a stamp or specific written certification by Design-Builder that it has satisfied its obligations under the Contract Documents with respect to preparation of the Submittal, and that Design-Builder approves the Submittal.
- F. All Submittals must be acceptable based on compliance with form and content requirements of the Contract Documents. Design-Builder shall submit Design Submittals for Owner's review and approval. Other Submittals shall not require express approval, except as indicated in the Supplementary Conditions or elsewhere in the Contract Documents.

8.02 *Owner's Review of Submittals*

- A. Owner will review all Submittals, and may comment on any Submittal. Any response to a Submittal by Owner shall be in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.07, and the provisions of the Contract Documents.
- B. For those Submittals requiring Owner's review and approval, Owner's response will be in writing and will indicate either that Owner approves the Submittal or rejects the Submittal. Owner may also include comments regarding the approved or rejected Submittal. For those Submittals that do not require approval, the Submittal shall be deemed acceptable to Owner unless Owner responds with a timely objection or adverse comment.
- C. Unless a specific provision of the Contract Documents expressly provides otherwise, Owner's review of a Submittal will be to determine if the Submittal complies with and is consistent with the Contract Documents. If Owner concludes that a Submittal requiring approval complies with and is consistent with the Contract Documents, the Owner shall approve such Submittal.
- D. Owner's approval, rejection, or acceptance of a Submittal will not extend to the means, methods, techniques, sequences, or procedures of Construction, or to safety precautions or programs incident thereto.
- E. Owner's review, comments, approval, rejection, or acceptance of Submittals shall not relieve Design-Builder from responsibility for (1) performance of the Work in accordance with the Contract Documents, (2) the scheduling and progress of the Work, (3) the means, methods, sequences, techniques, and procedures of Construction, and safety precautions and programs incident thereto, or (4) any variation from the requirements of the Contract Documents, unless Design-Builder has in a separate written communication at the time of submission called Owner's attention to each such variation, and Owner has given written approval of each such variation; nor shall Owner's review, comments, approval, rejection, or acceptance of a Submittal impose any such responsibility on Owner.

- F. Construction tasks and expenditures by Design-Builder prior to Owner's review and approval or acceptance of any Submittal will be at the sole risk of Design-Builder.
- G. In reviewing, approving, rejecting, accepting, or commenting on any Design Submittal, Owner does not assume responsibility for the design, for any deficiencies in the Design Submittal or in the Design Professional Services by which they were prepared, or for constructability, cost, or schedule problems that may arise in connection with the Design Submittal.
- H. The parties acknowledge that Design-Builder's design responsibilities continue after commencement of Construction. During the course of Construction, the Design-Builder may propose modifications to the Construction Drawings and Construction Specifications. Owner shall approve such proposed modifications if (1) they comply with and are consistent with the Contract Documents, (2) Design-Builder has demonstrated that the modification is minor in character, or will not be detrimental to the quality and function of the Work, (3) the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters, and (4) Owner has not relied on the previously-approved Construction Drawings and Construction Specifications, such that the proposed modification would be detrimental to the Owner's interests. At its option, Owner may also approve more substantial or divergent proposed modifications, provided that the appropriate Project Design Professional has reviewed and approved the proposed modification with respect to any technical or engineering matters.

ARTICLE 9 – OTHER CONSTRUCTION

9.01 *Other Work*

- A. In addition to and apart from the Work to be performed and furnished by Design-Builder under the Contract Documents, the Owner may perform other construction work at or adjacent to the Site during the course of the Project. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Design-Builder written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work at or adjacent to the Site, Owner shall provide such information to Design-Builder.
- C. Design-Builder shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and to Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Design-Builder shall do all cutting, fitting, and patching of the Construction that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Builder shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected.

- D. If the proper execution or results of any part of the Construction depends upon work performed by others under this Article 9, Design-Builder shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Construction. Design-Builder's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Construction, except for latent defects and deficiencies in such other work.

9.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Design-Builder prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. If the Supplementary Conditions do not identify the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors, Owner shall have sole authority and responsibility for such coordination.

9.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Construction or to the property of Design-Builder or the Construction Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Construction, through actions or inaction, then Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Design-Builder in the Contract Documents, and any provisions in Laws or Regulations concerning utility action or inaction, or related remedies. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Design-Builder assigning to Owner all Design-Builder's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Design-Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.
- B. Design-Builder shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Design-Builder fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Design-Builder, and assign to such other contractor or utility owner the Owner's contractual

rights against Design-Builder with respect to the breach of the obligations set forth in this paragraph.

- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Design-Builder shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Design-Builder's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Design-Builder.
- D. If Design-Builder damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Design-Builder's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Design-Builder's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Design-Builder or Owner, then Design-Builder shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and its officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 10 – OWNER'S RESPONSIBILITIES

10.01 General

- A. Owner shall do the following in a timely manner so as not to delay the services of Design-Builder:
 - 1. If requested in writing by Design-Builder, furnish reasonable evidence satisfactory to Design-Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design-Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days' notice to the Owner;
 - 2. Make payments to Design-Builder promptly when they are due, as provided in Paragraph 14.01 and 14.06;
 - 3. Furnish the Site as set forth in Paragraph 5.01; arrange for safe access to and make all provisions for Design-Builder to enter upon public and private property as may reasonably be required for Design-Builder to perform Work under the Contract.
 - 4. Furnish to Design-Builder, as required for performance of the Work, the following, all of which Design-Builder may use and rely upon in performing services under this Agreement:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, and other special engineering surveys or data;

- c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Utility and topographic mapping and surveys;
 - f. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; any information or data known to Owner concerning underground facilities at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data;
 - g. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site;
 - h. Engineering surveys to establish reference points which in Owner's judgment are necessary to enable Design-Builder to proceed with the Work;
 - i. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
 - j. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Owner to obtain.
5. Provide information known to Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
- B. If an obligation ascribed to Owner in Paragraph 10.01.A is expressly assigned to Design-Builder, in the description of the Work or elsewhere in the Contract Documents, then such express assignment to Design-Builder shall supersede the provision in Paragraph 10.01.A.
- C. Recognizing and acknowledging that Design-Builder's services and expertise do not include the following services, Owner shall furnish or obtain, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, or Design-Builder reasonably requests.
 - c. Such auditing services as Owner requires to review cost submittals or ascertain how or for what purpose Design-Builder has used the money paid.
- D. Examine all studies, reports, alternate solutions, sketches, drawings, specifications, proposals, Submittals (including Design Submittals), and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination), and if a decision is required with respect to any such document, render such decision in writing pursuant to any specific schedule, or if no specific schedule pertains, within a reasonable time after receipt of the document.

10.02 *Insurance*

- A. Owner's responsibilities with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

10.03 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

10.04 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility with respect to undisclosed Hazardous Environmental Conditions uncovered or revealed at the Site is set forth in Paragraph 5.06.

10.05 *Owner's Site Representative*

- A. Owner may furnish an Owner's Site Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Owner's Site Representative and assistants will be as provided in the Supplementary Conditions.

10.06 *Owner's Consultants and Managers*

- A. Owner's Consultant, if any, is identified in the Agreement.
- B. Owner shall advise Design-Builder of the identity and scope of services of any other independent consultants or managers retained by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
- C. Neither Owner's Consultant, Owner's Site Representative, nor any other consultant or manager retained by Owner, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Owner's Consultant and such other consultants and managers shall not supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

10.07 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Design-Builder's safety programs of which Owner has been informed pursuant to Paragraph 7.13.D.
- B. Owner shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.

10.08 *Permits and Approvals*

- A. Owner shall obtain reviews, approvals, certificates, and permits from governmental authorities having jurisdiction over the Project as indicated in the Contract Documents.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order or a Work Change Directive.
 - 1. *Change Orders*: If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - 2. *Work Change Directives*: The Work modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order. When a Work Change Directive is issued, the parties will promptly meet to attempt to negotiate the Work Change Directive's effect, if any, on the Contract Times and Contract Price. The effect, if any, on Contract Times and Contract Price, together with the Work Change Directive's addition, deletion, or revision to the Work, will be set forth in a subsequently issued Change Order.
- B. Either Owner or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.

11.02 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, and notwithstanding any other provision of the Contract, Owner may, at any time or from time to time, order or authorize additions, deletions, or revisions in the Work within the general scope of the Contract. Such changes may be accomplished by a Change Order, if Owner and Design-Builder have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Design-Builder shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Design-Builder to undertake work that Design-Builder reasonably concludes cannot be performed in a manner consistent with Design-Builder's safety or professional obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Paragraph 7.16, or in the case of uncovering Construction as provided in Paragraph 13.03.A.3.

11.04 *Changes Involving the Design*

- A. To the extent a change, whether proposed by Design-Builder or Owner, ordered by Owner, or set forth in a proposed Change Order or in a Work Change Directive, involves the design (as set forth in the Construction Drawings, Construction Specifications, or otherwise) or other engineering or technical matters, such changes must be reviewed and approved by the applicable Project Design Professional. The review and approval may occur at the time the change occurs, or as part of Design-Builder's provision of Professional Design Services in response to the change.

11.05 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim regarding an adjustment in the Contract Price shall be presented by written notice to the other party in accordance with Paragraph 16.01.
- B. If the Contract Price is based on Cost of the Work, then the provisions in the Agreement regarding Cost of the Work and changes in the Design-Builder's fee, Contract Price, Guaranteed Maximum Price, and Guaranteed Maximum Fee, apply.
- C. The value of any Work covered by a Change Order or of any adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.02); or
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.05.D); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents, and agreement to a lump sum is not reached under Paragraph 11.05.C.2, then on the basis of the Cost of the Work for price adjustments (determined as provided in the Cost of the Work provisions in the Agreement, if applicable, or in Paragraph 12.01), plus a Design-Builder's Fee for overhead and profit (determined as provided in Paragraph 11.05.D).
- D. *Design-Builder's Fee:* The Design-Builder's fee for overhead and profit on Change Orders shall be determined as follows:
 - 1. A mutually acceptable fixed fee; or
 - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 12.01.B.1.a. and 12.01.B.2, the Design-Builder's fee shall be 15 percent;
 - b. For costs incurred under Paragraph 12.01.B.3, 12.01.B.4, 12.01.B.5, and 12.01.B.6, the Design-Builder's fee shall be 5 percent;
 - c. With respect to Construction Subcontracts, where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of this Contract is that the Design-Builder's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraph 12.01 by the subcontractor that

actually performs the Work, at whatever tier, and (2) with respect to Design-Builder itself, and to any Construction Subcontractors of a tier higher than that of the Construction Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Construction Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Construction Subcontractor that actually performs the Work;

- d. With respect to Design Agreements, the Engineer or other invoicing Project Design Professional under a Design Agreement may add a fee of 5 percent to an invoice from a lower tier design entity, and Design-Builder may add a fee of 5 percent to an invoice from Engineer or other invoicing Project Design Professional; Owner shall not be responsible for any other mark-up at any tier (other than those incorporated in a factor, multiplier, hourly rate, or stipulated sum from the entity performing the subject Design Professional Services);
- e. No fee will be payable on the basis of costs itemized in Paragraph 12.01.B.7 or 12.01.C;
- f. The amount of credit to be allowed by Design-Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design-Builder's fee by an amount equal to 5 percent of such net decrease; and
- g. When both additions and credits are involved in any one change, the adjustment in Design-Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.05.D.2.a through 11.05.D.2.e., inclusive.

11.06 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim regarding an adjustment of the Contract Times shall be presented by written notice to the other party pursuant to Paragraph 16.01.
- B. Design-Builder's entitlement to an adjustment of the Contract Times under this Contract is conditioned on such adjustment being essential to Design-Builder's ability to complete the Work within the Contract Times.

11.07 *Execution of Change Orders*

- A. Owner and Design-Builder shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Design-Builder has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's correction of defective Work under Paragraph 13.05 or Owner's acceptance of defective Work under Paragraph 13.07, or (c) agreed to by the

parties (all subject to the need for review and approval by the applicable Project Design Professional pursuant to Paragraph 11.04); and

4. Changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Article 16.
- B. If Owner or Design-Builder refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK ADJUSTMENTS; UNIT PRICE WORK

12.01 *Cost of the Work*

- A. *Costs of the Work Adjustment:* When the price of Work covered by a Change Order or an adjustment in Contract Price is to be determined on the basis of Cost of the Work, the Cost of the Work adjustment means the sum of all costs necessarily incurred and paid by Design-Builder in the proper performance of the specific portion of the Work. The costs to be reimbursed to Design-Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the adjustment. If the Agreement contains Cost of the Work provisions, such provisions shall govern in determining the Cost of the Work for Change Order or adjustment purposes. If the Agreement does not contain Cost of the Work provisions, then the provisions in Paragraph 12.01 shall apply.
- B. *Costs Included:* The Cost of the Work adjustment does not include any of the costs itemized in Paragraph 12.01.C, and shall include only the following items with respect to the subject Work:
1. Payroll costs for employees in the direct employ of Design-Builder in the performance of the subject Work, under schedules of job classifications agreed upon by Owner and Design-Builder in advance of such performance.
 - a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Contract shall be included in the above to the extent such performance of Work is authorized by Owner.
 - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services as employees of Design-Builder.

For purposes of this Paragraph 12.01.B.1.b, Design-Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, as designated in the Agreement, for services in the performance of the subject Work.

2. Cost of all materials and equipment furnished and incorporated in the subject Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design-Builder unless Owner deposits funds with Design-Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design-Builder shall make provisions so that they may be obtained.
3. Cost of permits obtained by Design-Builder.
4. Payments made by Design-Builder to Construction Subcontractors for subject Work performed or furnished by such Construction Subcontractors. If any subcontract provides that the Construction Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Construction Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design-Builder's Cost of the Work and fee.
5. Payments made by Design-Builder for Design Professional Services provided or furnished with respect to the subject Work under a Design Agreement.
6. Costs of special consultants (not including Project Design Professionals), including but not limited to testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.
7. Supplemental costs including the following items:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Design-Builder's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Design-Builder.
 - c. Rentals of all construction or engineering equipment and machinery, and their parts, whether rented from Design-Builder or from others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. All such costs shall be in accordance with the terms of such rental agreements. The rental of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the subject Work, and for which Design-Builder is liable, imposed by Laws or Regulations.
 - e. Deposits lost for causes other than negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- f. Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by Design-Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design-Builder, any Construction Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design-Builder's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work.
 - h. Minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. Cost of premiums for all Bonds and insurance Design-Builder is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Design-Builder whether at the Site or in Design-Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1, all of which are to be considered administrative costs covered by the Design-Builder's fee.
 - 2. Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the Site.
 - 3. Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the subject Work and charges against Design-Builder for delinquent payments.
 - 4. Costs due to the negligence of Design-Builder, any Construction Subcontractor, Engineer or other Project Design Professionals, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 5. Other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Paragraph 12.01.B.
- D. *Design-Builder's Fee:* When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design-Builder's fee shall be determined as set forth in Paragraph 11.05.D.
- E. *Documentation:* Whenever the cost of any Work is to be determined pursuant to Paragraph 12.01.B and 12.01.C, Design-Builder will establish and maintain cost records in accordance

with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

12.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design-Builder will be made by Owner.
- B. If Design-Builder's compensation is based on Cost of the Work, this Contract will not include compensation under unit prices unless expressly stated otherwise.
- C. Each unit price will be deemed to include an amount considered by Design-Builder to be adequate to cover Design-Builder's overhead and profit for each separately identified item.
- D. Design-Builder or Owner may seek an adjustment in the Contract Price if:
 - 1. The quantity of any item of Unit Price Work performed by Design-Builder differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. Such an adjustment would not duplicate, and is coordinated with, any other related adjustments of Contract Price; and
 - 3. Design-Builder has incurred additional expense, or less expense, as a result of the variation in quantity.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

13.01 *Access to Construction*

- A. Owner, Owner's Consultant, Owner's Site Representative, and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's Site safety procedures and programs so that they may comply therewith as applicable.

13.02 *Tests, Inspections, and Approvals*

- A. Design-Builder shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. By Laws and Regulations, unless the Contract Documents or Laws and Regulations expressly allocate responsibility for a specific inspection or test to Owner;
 - 3. To attain Owner's acceptance of materials or equipment to be incorporated in the Construction;

4. By manufacturers of equipment furnished under the Contract Documents;
 5. To meet the requirements of the Construction Drawings and Construction Specifications;
 6. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Construction; and
 7. For acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Builder's purchase thereof for incorporation in the Construction.
- B. Owner shall be responsible for arranging, obtaining, and paying for all inspections and tests expressly required by the Contract Documents or Laws and Regulations to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Construction shall be governed by the provisions of Paragraph 13.03.
 - C. All inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Design-Builder.
 - D. If the Contract Documents require the Construction (or part thereof) to be approved by Owner or another designated individual or entity, then Design-Builder shall assume full responsibility for arranging and obtaining such approvals.
 - E. Design-Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, and approvals.
 - F. Design-Builder shall give Owner timely notice of readiness of the Construction (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
 - G. Each party shall provide the other with copies of any certificates of inspection or approval obtained with respect to tests and inspections.
 - H. Both parties may rely on the results of inspections and tests, performed pursuant to this paragraph and the governing provisions of the Contract Documents, Laws and Regulations, and the Construction Drawings and Construction Specifications.
 - I. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design-Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation. Such uncovering shall be at Design-Builder's expense unless Design-Builder has given Owner timely notice of Design-Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

13.03 *Uncovering Construction*

- A. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, then Design-Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection, or testing, as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material, and equipment.
 1. If the Construction had been covered contrary to the written request of Owner or a requirement of the Contract Documents, then uncovering it for Owner's observation and re-covering it shall be at Design-Builder's expense, regardless of whether it is defective.

2. If it is found that the covered Construction is defective, Design-Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement, re-covering, or reconstruction (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
3. If the covered Construction is not found to be defective, Design-Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, re-covering, and reconstruction, subject to the provisions of Paragraph 13.03.A.1.

13.04 *Defective Construction*

- A. It is Design-Builder's obligation to assure that the Construction is not defective.
- B. Owner shall give Design-Builder prompt written notice of all defective Construction of which Owner has actual knowledge. Owner may reject, accept, or correct defective Construction.
- C. Promptly after receipt of written notice of defective Construction, unless Owner expressly indicates that it will accept the defective Construction, Design-Builder shall correct all such defective Construction, whether or not fabricated, installed, or completed; or, if Owner has rejected the defective Construction, remove it from the Project and replace it with Construction that is not defective.
- D. When correcting defective Construction, Design-Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Construction.

13.05 *Owner May Correct Defective Construction*

- A. If Design-Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction, or if Design-Builder fails to perform the Construction in accordance with the Contract Documents, or if Design-Builder fails to comply with any other provision of the Contract Documents, Owner may, after 7 days' written notice to Design-Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.05 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design-Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design-Builder's services related thereto, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow Owner, Owner's Consultant, Owner's Site Representative, and Owner's other representatives, agents, employees, and contractors, access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

13.06 *Costs*

- A. Design-Builder shall bear all costs arising out of or relating to the correction, removal, or replacement of defective Construction, including but not limited to repair of adjacent Work or property; delay costs and impacts; fees and charges of engineers, architects, attorneys, and other professionals; and all court, arbitration, or other dispute resolution costs.

- B. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising its rights and remedies arising from defective Construction under this Article will be charged against Design-Builder, by set-off against payment or otherwise.
- C. Design-Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to defective Construction.

13.07 *Owner's Acceptance of Defective Construction*

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. If such acceptance is proposed prior to final payment, it shall be subject to confirmation by the applicable Project Design Professional that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Design-Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted.

13.08 *Owner May Stop Construction*

- A. If Construction is defective, or Design-Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design-Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design-Builder or any other party.

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

14.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.04 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.
- B. *Application for Progress Payment:* On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design-Builder shall submit to Owner for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are

covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

C. *Payment of Obligations:*

1. Beginning with the second Application for Payment, each Application shall include an affidavit of Design-Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
2. If Design-Builder contends that it has withheld payment of underlying obligations for good cause, then Design-Builder shall inform Owner of the identity of the entity from which Design-Builder has withheld payment, the amount of the withholding, and the reason for the withholding.

D. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

E. *Review of Applications:*

1. Owner will, within 10 days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design-Builder indicating in writing its reasons for refusing to accept the Application.

F. Not more than 10 days after accepting such Application the amount will become due and when due will be paid by Owner to Design-Builder.

1. If Owner should fail to pay Design-Builder at the time the payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that he will stop the Work within 7 days after receipt of the notice by Owner, and after such 7-day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
2. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
3. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

G. *Reduction in or Refusal to Make Payment:*

1. Owner may impose a set-off against the whole or any part of any such payment, or nullify any previous payment because of subsequently discovered evidence or the results of subsequent inspections or tests, to the extent that is reasonably necessary to protect Owner from loss because:
 - a. Claims have been made against Owner on account of Design-Builder's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Design-Builder's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from breach of warranty, workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Design-Builder has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Design-Builder has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Design-Builder is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Construction is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Construction in accordance with Paragraph 13.05, or has accepted defective Construction pursuant to Paragraph 13.07;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event that would constitute a default by Design-Builder and therefore justify a termination for cause has occurred;
 - j. Liquidated damages, special damages, or performance damages have accrued under the Contract Documents as a result of Design-Builder's failure to achieve Milestones, Substantial Completion, final completion of the Work, or performance requirements, as applicable;
 - k. Liens have been filed in connection with the Work, except where Design-Builder has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens; or
 - l. There are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Design-Builder immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Design-Builder any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Design-Builder the amount so withheld, or any adjustment thereto agreed to by Owner and Design-Builder, if Design-Builder remedies the reasons for such action. The reduction imposed shall be binding on Design-Builder unless it duly presents a written notice of Claim contesting the reduction.

14.02 *Design-Builder's Warranty of Title*

- A. Design-Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether already incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.03 *Substantial Completion*

- A. When Design-Builder considers the Work ready for its intended use Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a certificate of

Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor.

- B. If Owner considers the Work substantially complete:
 - 1. Owner and Design-Builder will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Design-Builder agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
 - 2. Owner will prepare and deliver to Design-Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.
- C. After Substantial Completion the Design-Builder shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Design-Builder may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- D. Owner shall have the right to exclude Design-Builder from the Site after the date of Substantial Completion subject to allowing Design-Builder reasonable access to remove its property and complete or correct items on the punch list.

14.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (1) has specifically been identified in the Contract Documents, or (2) Owner and Design-Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design-Builder's performance of the remainder of the Construction, subject to the following:
 - 1. Owner at any time may request Design-Builder in writing to permit Owner to use or occupy any such part of the Construction that Owner believes to be ready for its intended use and substantially complete. If Design-Builder agrees that such part of the Work is substantially complete, Design-Builder and Owner will follow the procedures of Paragraph 14.03 for that part of the Construction.
 - 2. Design-Builder at any time may notify Owner in writing that Design-Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner and Design-Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 14.03 will apply

with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 6.05 regarding property insurance.

14.05 *Final Inspection*

- A. Upon written notice from Design-Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design-Builder and will notify Design-Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 *Final Payment*

A. *Application for Payment:*

1. After Design-Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, and Record Documents, Design-Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by:
 - a. All documentation called for in the Contract Documents;
 - b. Consent of the surety, if any, to final payment;
 - c. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment;
 - d. A list of all disputes that Design-Builder believes are unsettled; and
 - e. Complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 14.06.A.2, and as approved by Owner, Design-Builder may furnish receipts or releases in full and an affidavit of Design-Builder that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (b) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Project Design Professional, Construction Subcontractor, or Supplier fails to furnish such a release or receipt in full, Design-Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

- B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design-Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, give written notice to Design-Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design-Builder, indicating in writing the reasons for refusing to process final payment, in

which case Design-Builder shall make the necessary corrections and resubmit the Application.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment.
- D. *Payment Becomes Due*: The amount will become due and will be paid by Owner to Design-Builder 30 days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability.

14.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Design-Builder. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.05, from Design-Builder's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from unresolved disputes or Claims presented by Owner, or from Design-Builder's continuing obligations under the Contract.
- B. The acceptance of final payment by Design-Builder will constitute a waiver by Design-Builder of all claims and rights against Owner other than those pending matters that have been duly submitted to dispute resolution under the provisions of Article 16.

14.08 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design-Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (1) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (2) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design-Builder.
- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, or removed or replaced, under this Paragraph 14.08, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design-Builder, which will fix the date on which Work will be resumed. Design-Builder shall resume the Work on the date so fixed. Design-Builder shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events justifies termination for cause:
 - 1. Design-Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the progress schedule as duly adjusted).
 - 2. Design-Builder's disregard of Laws or Regulations of any public body having jurisdiction.
 - 3. Design-Builder's violation in any substantial way of provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, Owner may, after giving Design-Builder (and the surety, if any) 7 days' written notice, terminate the services of Design-Builder, take possession of any completed Design Submittals prepared by or for Design-Builder (subject to the limited license and indemnification provisions of Paragraph 3.04), exclude Design-Builder from the Site, take possession of the Work, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design-Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design-Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- C. Notwithstanding Paragraph 15.02.B, Design-Builder's services will not be terminated if Design-Builder begins, within 7 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Design-Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design-Builder by Owner will not release Design-Builder from liability.

15.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Design-Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design-Builder shall be paid (without duplication of any items) for:
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. Amounts paid in settlement of terminated contracts with Project Design Professionals, Construction Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with such terminated contracts); and
 - 4. Reasonable expenses directly attributable to termination.
- B. Design-Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Design-Builder May Stop Work or Terminate*

- A. If, through no act or fault of Design-Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, Owner fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Design-Builder any sum finally determined to be due, then Design-Builder may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.A. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design-Builder any sum finally determined to be due, Design-Builder may upon 7 days' written notice to Owner stop the Work until payment is made of all such amounts due Design-Builder, including interest thereon. The provisions of this paragraph are not intended to preclude Design-Builder from obtaining an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design-Builder's stopping Work as permitted by this paragraph.

ARTICLE 16 – DISPUTES

16.01 *Methods and Procedures*

- A. *Notice of Claim:* If Owner and Design-Builder are not in agreement regarding a proposed or requested Change Order, other proposed adjustment of Contract Price or Contract Times, a Work Change Directive issued by Owner, or any other relief proposed or requested under the Contract, then either party may provide written notice of a Claim to the other party. Such notice of Claim shall be given within 90 days of: the proposal or request for a Change Order; such other proposed adjustment of Contract Price or Contract Times; the issuance of the Work Change Directive; or the proposal or request for other relief under the Contract.

The notice of Claim shall be given within the 90 days regardless of whether the other party has responded to such proposal, request, or issuance, and regardless of whether discussions or negotiations are in progress; provided, however, that the parties may extend the time to give such notice of Claim by mutual written agreement. The notice of Claim shall include a statement of position, specification of the remedy sought, and supporting documentation.

- B. *Response:* Within 30 days of the date of notice of Claim, the receiving party shall respond with a written statement of position and any supporting documentation.
- C. *Direct Negotiations:* Owner and Design-Builder agree to directly negotiate all Claims between them in good faith for a period of 60 days from the date of notice of Claim.
- D. *Mediation:* If direct negotiations are unsuccessful in resolving a Claim, then Owner and Design-Builder shall submit the unsettled Claim to mediation by a mutually agreeable mediator or mediation service. Owner and Design-Builder agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days.
 - 1. The fees and expenses, including filing fees, of the mediator and any mediation service shall be shared equally by Owner and Design-Builder.
 - 2. The mediation shall be held in the locality where the Project is located, unless another location is mutually agreed upon by the parties.
 - 3. A settlement (if any) resulting from such mediation will be specifically enforceable under the prevailing law, by any court having jurisdiction.
 - 4. Participation in the mediation process in good faith is a condition precedent to commencing final or binding dispute resolution.
- E. If mediation is unsuccessful in resolving a Claim, then within 120 days of the completion of the mediation (1) the parties may mutually agree to a binding dispute resolution process of their choice, or (2) the claimant may give notice to the other that the claimant will seek to have the dispute resolved by a binding dispute resolution method established in this Contract, or if no such method has been established, by a court of competent jurisdiction. Failure by claimant to give such notice in a timely manner shall result in a waiver of the Claim.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice to the other party to this Contract, it will be deemed to have been validly given if delivered to the Authorized Representative of the other party:
 - 1. In person, by a commercial courier service or otherwise; or
 - 2. By registered or certified mail, postage prepaid; or
 - 3. By e-mail, with the words “Formal Notice” or similar in the e-mail’s subject line.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any

such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. Unless expressly stated otherwise in this Contract, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, or waiver of, any rights and remedies available to any or all of them which are otherwise imposed or available by:
 - 1. Laws or Regulations; or
 - 2. Any special warranty or guarantee; or
 - 3. Other provisions of the Contract.
- B. The provisions of Paragraph 17.03.A will be as effective as if repeated specifically in the Contract in connection with each particular duty, obligation, right and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to this Contract and any and all Claims and other matters at issue, Owner shall not be liable to Design-Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Builder on or in connection with any other project or anticipated project.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

17.07 *Controlling Law*

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.

17.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY GENERAL CONDITIONS

HERITAGE RANCH COMMUNITY SERVICES DISTRICT PHOTOVOLTAIC (PV) SYSTEM PROJECT

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01, Defined Terms, add the following term:

Owner or District. The Heritage Ranch Community Services District, 4870 Heritage Road, Paso Robles, California, 93446.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02, Copies of Documents, amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner will not furnish Design-Builder with hard copies of Contract Documents. Any printed copies of the Contract Documents must be provided by Design-Builder.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.02.A, add the following new paragraph immediately after Paragraph 5.02.A.3:

Design-Builder's activities shall at no times impact operations of the District's facilities, including wastewater collection, treatment and disposal systems, and water treatment plant, storage and distribution systems. Coordinate with District staff for all activities related to the PV Projects that may impact such services.

SC-5.04.A, add the following new paragraph immediately after Paragraph 5.04.A:

No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

SC 5.06.A, delete Paragraph 5.06.A in its entirety and insert the following in its place:

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

ARTICLE 6 – BONDS AND INSURANCE

SC-6.02, add the following paragraph immediately after Paragraph 6.02.B:

Design-Builder may obtain workers' compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a workers' compensation insurance provider by the appropriate state agency having jurisdiction, and (c) has been accepted to provide workers' compensation insurance for similar projects by the state within the last 12 months.

SC-6.03, add the following new paragraph immediately after Paragraph 6.03.J:

The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraph 6.03.A of the General Conditions:

State:	<u>Statutory</u>
Federal, if applicable (e.g., Longshoreman's):	<u>Statutory</u>
Employer's Liability:	
Bodily injury, each accident	\$ <u>1,000,000</u>
Bodily injury by disease, each employee	\$ <u>1,000,000</u>
Bodily injury/disease aggregate	\$ <u>2,000,000</u>

2. Design-Builder's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate	\$ <u>2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

3. Automobile Liability under Paragraph 6.03.E. of the General Conditions:

Bodily Injury:	
Each person	\$ <u>1,000,000</u>
Each accident	\$ <u>1,000,000</u>
Property Damage:	
Each accident	\$ <u>1,000,000</u>
[or]	
Combined Single Limit of	\$ <u>1,000,000</u>

4. Excess or Umbrella Liability:

Per Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>2,000,000</u>

5. Contractor's Pollution Liability under Paragraph 6.03.G of the General Conditions:

Each Occurrence	\$ _____
General Aggregate	\$ _____

If box is checked, Design-Builder is not required to provide Contractor's Pollution Liability insurance under this Contract.

6. Additional Insureds: In addition to Owner, include as additional insureds the following: Kenwood Energy, PO Box 692, Kenwood, CA 95452. ; Wallace Group, A California Corporation, 612 Clarion Court, San Luis Obispo, CA 93401.

7. Design-Builder's Professional Liability:

Each Claim	\$ <u>1,000,000</u>
Annual Aggregate	\$ <u>2,000,000</u>

SC-6.05.A, Builder's Risk Property Insurance is deleted in its entirety.

ARTICLE 7 – DESIGN-BUILDER'S RESPONSIBILITIES

SC-7.04.B, replace GC-7.04.B with the following new paragraph:

Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, and in the absence of any Laws or Regulations to the contrary, all Construction at the Site shall be performed during regular working hours. Design-Builder shall not perform Construction Work on any legal holiday. Design-Builder may perform Construction at the Site outside regular working hours or on a legal holiday only with Owner's written consent, which will not be unreasonably withheld. Contact District staff for a list of legal holidays recognized by the District. Regular working hours will be 7 am to 4 pm, Monday through Friday.

SC-7.04.B., add the following new paragraph immediately after Paragraph SC-7.04.B.2:

Design-Builder shall be responsible for the cost of any overtime pay or other expense incurred by Owner for services of Owner's Site Representative, Owner's Consultant, and other additional costs incurred by Owner because of the performance of Construction outside regular working hours (including specialty inspection services). If Design-Builder is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due Design-Builder under Article 14.

SC-7.09, add the following sentence at the end of Paragraph 7.09.A:

Refer to the technical specifications for requirements on Permits for this Project.

ARTICLE 8 – SUBMITTALS

SC-8.01, insert the following sentence at the end of Paragraph 8.01.A:

For additional information on submittals, see Technical Specifications.

SC-8.02, insert the following sentence at the end of Paragraph 8.02.B:

Unless otherwise specified, all submittals will be reviewed and approved by Owner, with the exception of submittals pertaining specifically to Contractor safety such as Shoring Plans.

ARTICLE 10 – OWNER’S RESPONSIBILITIES

SC-10.01.A.4, delete the following provisions in their entirety: 4.a; 4.b; 4.e; 4.f; 4.h.

SC-10.01.B, add the following sentence to Paragraph 10.01.B:

Refer to the Technical Specifications for Design-Builder's obligation to provide necessary surveys and geotechnical information.

SC-10.05, Owner’s Site Representative, add the following new paragraph immediately after Paragraph 10.05.A:

On this Project, Owner will furnish an Owner’s Site Representative (OSR) to represent Owner at the Site or assist Owner in observing the performance of the Work. Details of responsibilities and schedule of this Site Representative have not been developed by Owner at this time. However, Design-Builder shall fully cooperate and coordinate with Owner, Owner's Consultants, and Owner's Site Representative as part of the Work. The authority and responsibilities of OSR are expected to include some or all of the following:

1. General: OSR's dealings in matters pertaining to the Construction in general shall be with Design-Builder’s designated representatives at the Site. OSR will only deal directly with Design-Builder’s Representative for all matters, including Construction Subcontractors and Suppliers, Project Design Professionals, and other team members under the authority of the Design-Builder.
2. Schedules: Review the Construction progress schedule, schedule of Submittals, and Schedule of Values prepared by or for Design-Builder.
3. Conferences and Meetings: Attend meetings with Design-Builder and Construction Subcontractors, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings.
4. Liaison. Serve as Owner’s liaison:
 - a. with Design-Builder regarding the Construction.
 - b. with Design-Builder when Design-Builder’s operations affect Owner’s onsite operations.
 - c. with respect to Design-Builder requests for additional details or information from Owner, or for clarifications and interpretations of the Contract Documents.
 - d. with respect to proposed modifications of the Contract Documents, Change Orders, and similar matters.

5. Submittals:
 - a. Record date of receipt of Submittals and samples approved by Design-Builder.
 - b. Receive samples furnished at the Site by Design-Builder, and notify Owner of availability of samples for examination.
 - c. Advise Owner and Design-Builder of the commencement of any portion of the Construction requiring a Submittal or sample for which OSR believes that the Submittal has not been accepted by Owner
6. Observation of the Construction:
 - a. Conduct on-site observations of Design-Builder's Construction in progress.
7. Inspections, Tests, and System Start-ups:
 - a. Observe tests, equipment and systems start-ups, and operating and maintenance training.
 - b. Review Design-Builder's recordkeeping regarding tests, equipment and systems start-ups, and operating and maintenance training.
8. Records:
 - a. Prepare a daily report or keep a diary or log book, recording Design-Builder's hours at the Site, Construction Subcontractors present at the Site, weather conditions, Site visitors, any Site accidents, force majeure or delay events, emergencies, damage to property by fire or other causes, the discovery of any Constituent of Concern or Hazardous Environmental Condition, and deliveries of equipment or materials.
 - b. Record names, addresses, fax numbers, e-mail addresses, website locations, and telephone numbers of all Construction Subcontractors and major Suppliers of materials and equipment.
9. Payment Requests: Review each Construction-related Application for Payment received from Design-Builder; note compliance with the established procedure for Application for Payment submission; meet with Design-Builder to review each Application for Payment; and forward the Application for Payment with recommendations to Owner, noting particularly the relationship of the payment requested to: (a) the Schedule of Values accepted by Owner, (b) relevant cost of the work provisions, (c) Construction completed, and (d) materials and equipment delivered to the Site but not incorporated in the Construction.
10. Certificates, Operation and Maintenance Manuals: During the course of Construction, review materials and equipment certificates, operation and maintenance manuals, and other documentation required by the Contract Documents to be assembled and furnished by Design-Builder, noting whether the documentation is applicable to the items actually installed, and deliver such documentation to Owner for its review and acceptance prior to payment for that part of the Work.

11. Completion:

- a. Participate in Owner's visits to the Site to determine Substantial Completion, assist in the preparation of a punch list of items to be completed or corrected, and in preparation of the certificate of Substantial Completion.
- b. Participate in Owner's final inspection at the Site to determine completion of the Work, in the company of Owner and Design-Builder, and assist in preparation of a final punch list of items to be completed and deficiencies to be remedied, if any.
- c. Observe whether items on the final punch list have been completed or corrected, and make recommendations to Owner concerning acceptance and issuance of the notice of acceptability of the Work. Assist Owner with preparing the notice of acceptability of the Work.

12. The OSR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Owner's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Design-Builder, Construction Subcontractors, Project Design Professionals, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Design-Builder.
6. Accept Submittals from anyone other than Design-Builder.

Have any authority with respect to Owner's occupancy of the Construction, in whole or in part.

ARTICLE 14 – PAYMENTS TO DESIGN-BUILDER; COMPLETION

SC-14.01.F, in the first sentence, delete the number "10" and replace with "30".

PART III

TECHNICAL SPECIFICATIONS

PART III

TECHNICAL SPECIFICATIONS

Heritage Ranch

Community Services District

Photovoltaic (PV) System Project



A handwritten signature in blue ink, appearing to be "TH", written over a light blue rectangular background.

Prepared by
Tim Holmes, PE
Kenwood Energy
PO Box 692
Kenwood, CA 95452

PART 1 INTRODUCTION

- 1.1 Heritage Ranch Community Services District, (“the District” or “Owner”) is seeking proposals for a photovoltaic (PV) system to offset energy use at various District facilities. Refer to the RFP for all proposal requirements, project goals/objectives and criteria for evaluating proposals.
- 1.2 The District has identified preapproved installation areas that are included in Exhibit 1.

PART 2 GENERAL

- 2.1 The Design-Builder is responsible for confirming the proper size of each PV system, accounting for site-specific conditions, applicable utility rates, etc.
- 2.2 The Work shall include all materials, labor, equipment, structures, fencing and gates, trenching, paving, electric panels, breakers, services, and incidentals necessary to install a complete PV system including, but not limited to, the work included in these Technical Specifications, the RFP, Design-Builder's Proposal, and all other Contract Documents defined in the Agreement.
- 2.3 At a minimum, the Project shall consist of the design, supply, and installation of equipment, mounting structures, terminal and combiner boxes, DC wiring, DC disconnect, grid-connected inverter, AC disconnect, AC wiring, all utility grade metering equipment, all designed to interconnect with the facilities' electrical systems.
- 2.4 The Design-Builder is responsible for all efforts related to ensuring that all NEMA paperwork is submitted and each PV system is interconnected to the proper accounts and locations.
- 2.5 It is the Design-Builder's responsibility to review all available drawings and visit the jobsite to collect and document existing conditions and determine conduit and wiring runs. The Design-Builder is also responsible for identifying all underground obstructions in the working area via District approved Underground subcontractor. The District will support the Design-Builder by providing all available drawings and institutional knowledge that is available. No allowance shall be made for any additional costs incurred by the Design-Builder due to failure to properly understand site conditions. Design-Builder shall notify USAAlert at 811, a minimum of two working days prior to excavation work, and allow Utility Companies to field locate/mark utilities in the Project Areas.
- 2.6 The Design-Builder must provide Civil, Soils, Geotechnical, and Structural engineering analyses and documentation, stamped and signed by a Civil or Structural Engineer registered in the State of California, certifying that the mounting structures can support any loads resulting from local applicable seismic and wind-load activity. All mounting canopies shall have a safety factor of at least 1.5.
- 2.7 Complete all required utility paperwork for the interconnection agreements and rate changes.
- 2.8 All current California Building Codes and all other applicable codes shall apply.

- 2.9 The systems shall be designed to meet all local applicable seismic and wind-load requirements.
- 2.10 The Design-Builder is responsible for securing, and for compliance with, all permits (building, fire, etc), final sign off, and final utility sign off.
- 2.11 The Design-Builder is responsible for Commissioning the system per manufacturer's requirements and providing documentation of proper operation.

PART 3 SUBMITTALS

3.1 SUBMITTALS DUE WITH THE PROPOSAL

- A Refer to Article 6.01 of the RFP.

3.2 SUBMITTALS DUE WITH EXECUTION OF THE AGREEMENT:

- A Refer to General Conditions, Supplemental General Conditions, Agreement and Notice of Award

3.3 PRE-CONSTRUCTION SUBMITTALS

- A 50% design plans including support structure details, mounting details, placement and installation, conduit raceways, conduit sizes, spacing, inverter location, equipment data sheets, etc.
- B Plan Drawings for review prior to submittal to the permitting jurisdiction.
- C PV Panel flash test results in Excel.
- D Professional Engineer (registered in the State of California) verification that the systems, buildings, and the mounting structures meet all local applicable seismic and wind-load requirements per the Specification.
- E Professional Engineer (registered in the State of California) shall verify that existing structures upon which PV systems be installed are capable of supporting the proposed system.
- F Certified warranty documentation.
- G Installation instructions and Operation and Maintenance (O & M) manuals for all equipment.
- H Utility interconnection applications.
- I Copies of permits.
- J Fire jurisdiction approval for fire access.

3.4 POST CONSTRUCTION SUBMITTALS

- A Prepare an as-built binder in hard copy and on flash drive in AutoCAD and PDF:
 - 1 As-built drawings showing the final placement of all panels, combiner boxes, connections, and conduit placement, electrical plans, including three line diagrams, and elevation drawings showing the final placement of the electrical equipment.
 - 2 Copies of all start-up procedure measurements.
 - 3 Copies of all testing data and reports.

- 4 Copies of Utility Operation Approval.
- 5 Lien releases from all subcontractors.

PART 4 WARRANTIES

- 4.1 All equipment and materials used in the construction of the system shall be warranted against degradation as defined in approved product submittals, for the life of the systems.
- 4.2 QUALITY ASSURANCE
 - A All generating equipment shall be certified by Underwriter Laboratories (“UL”). The system shall be comprised of UL listed components or in cases where a UL listed component is not available, the component shall be listed by another OSHA recognized National Recognized Testing Laboratory (“NRTL”).
 - B All installations shall meet or exceed Cal-OSHA requirements for equipment access.
 - C The installation shall not void the warranty or UL Listing of any existing equipment or electric panels

PART 5 DESIGN-BUILDER EXPERIENCE

- 5.1 Installation Contractor and Subcontractors must hold appropriate licenses as required by California State Licensing Board, and be approved by the Manufacturer to install the system.
- 5.2 Subcontractors must hold licenses in the appropriate disciplines.
- 5.3 Electrical work shall be completed by a licensed electrical contractor.

PART 6 MATERIALS SPECIFICATION

- 6.1 GENERAL
 - A All components shall be new and direct from the manufacturer; no used or refurbished materials are permitted.
 - B All materials that are used outdoors shall be sunlight and UV resistant.
 - C PV Panel wiring and homeruns shall be attached to the mounting system. Wires and cables shall not droop, hang onto roof surfaces, or be exposed to sunlight.
 - D All systems shall meet the requirements of all California Building Codes.
 - E PV module attachment must be four-point equally distributed over the frame.
 - F Materials shall be designed to withstand the temperatures to which they are exposed.
 - G Dissimilar materials shall be isolated from one another using non-conductive shims, washers, or other methods.
 - H Any materials, equipment, and workmanship that is found defective, based on the acceptance tests or for any other reason, shall be reported to the Owner. Defective material, equipment, and workmanship shall be replaced at no cost to Owner.
 - I Metals shall be hot dipped galvanized steel, anodized aluminum, and stainless

steel.

- J Aluminum shall not be placed in direct contact with concrete materials.
- K Only grade 316 or better stainless steel fasteners shall be used.
- L All external electrical conduits shall be rigid schedule 40, galvanized and unpainted.
- M All electrical equipment shall be rated for the current and voltage ratings necessary for the application.
- N All required over-current protection devices shall be included and accessible for maintenance. Each shall have trip ratings no greater than the de-rated amperage of the conductor it protects.
- O Drainage – The construction of, and permanent placement of the PV system shall not adversely affect water drainage.

6.2 PANEL MOUNTING SYSTEMS

- A All systems shall meet the requirements of the all national and California building codes.
- B All mounting systems shall result in the installation of a PV system that meets all local applicable seismic and wind-load requirements, with a safety factor of at least 1.5.
- C Shade Structures
 - 1 Minimum structure height of 10 feet.
 - 2 All columns and beams shall be ASTM A-500 Grade B or better steel.
 - 3 Designs shall meet the requirements of the specific application.
 - 4 Finishes – All main structural support components must be painted, using an appropriate paint and a color chosen by the District. Paint shall be Sherman Williams B66-350 series semi-gloss and B66-310 Primer, or equal. Painting shall be completed per manufacturer specification and instructions. Color to be selected by the the District.
 - 5 Lighting – The Design-Builder shall install energy efficient light fixtures that provide a minimum light level recommended for a parking lot by the IESNA. Light fixtures shall be vandal resistant fixtures with impact resistant (lexan) lenses and rated for wet locations. Fixtures shall be LED with a minimum CRI of 80, and a temperature rating of 4100K.
- D Metal roofs
 - 1 The fastening system shall be approved for the application. A Professional Engineer in the appropriate discipline shall approve, sign, and stamp the design.
 - 2 Minimum stand-off from the existing roof of 3 inches.
- E Roof-rack roof-mounted
 - 1 The rack and fastening system shall be approved for the application. A Professional Engineer in the appropriate discipline must approve, sign, and stamp the design.

- 2 The racking system shall result in the inclination and orientation specified in the Bid.
 - 3 Ensure that roof penetrations do not void roof warranties or result in any leakage issues during the full lifespan of the roof.
 - 4 Obtain approval of roof penetrations from the roof warranty company.
- F Ground Mounted
- 1 Racking systems must be installed to create a level site-line across the top of the panels for the entire array.
 - 2 Posts shall be installed plumb within the manufacturers' tolerances.
 - 3 Minimum height of 2 feet.
 - 4 Module tilt angle of 10 degrees.
- 6.3 MODULES
- A LG400N2W-A5 or equal.
 - B Photovoltaic modules shall be tested in the factory for design performance.
- 6.4 INVERTER
- A PV Inverter shall be SMA Sunny Tri-power or equal.
 - B The array shall have a dedicated inverter(s) with optimized performance.
 - C Each inverter shall be sized so that it can operate the PV arrays at a minimum of 90% of the array's kW rating.
 - D Installation shall meet all applicable UL 1741, IEEE Standard 929-2000 and standard 519, California electric code, and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- 6.5 FENCING
- A Fences are required around all ground mounted systems.
 - B 6 foot chain link with 1 inch barbs
 - C Galvanized with black coating
 - D Gates shall be lockable, and have a minimum 12 foot opening
- 6.6 ELECTRICAL ENCLOSURES AND BOXES
- A Exterior enclosures and boxes shall be minimum 14 gauge type 316 stainless steel with seams continuously welded and ground smooth, and fast access door latches.
 - B Interior enclosures and boxes shall be minimum 14 gauge NEMA 3R.
 - C Exterior doors shall have provisions for locking enclosure with standard padlocks.
 - D A copper ground bus shall be provided in each enclosure or cabinet. It shall have provisions for connecting a minimum of ten grounding conductors.
 - E Provide thermoplastic data pockets mounted on inside door. The As-Built

drawings for the electrical enclosure shall be placed in a watertight plastic wrap and shipped with the enclosure to the jobsite.

6.7 WIRE

- A All conductors shall be copper, with a minimum conductivity of 98%, at all locations that interconnected with the District owned equipment.
- B Wire shall be Class B stranded.
- C Insulation of all conductors and cables shall be rated for the voltage of the system.
- D Insulation type shall be moisture and heat resistant thermoplastic THWN, rated 90°C in dry locations and 75°C in wet locations, for #8 AWG and smaller. For #6 AWG and larger insulation shall be type XHHW.
- E Wire identification - all wires, field and interior (non-field) to equipment, shall be identified with machine permanent ink printed sleeve markers or clip-on markers covered with clear plastic heat shrinkable tubing. Hand lettered wire labels are not acceptable and shall be replaced at the Design-Builder's expense. All wires that are electrically the same (connected to common termination points) and do not pass through a contact or other switching device shall have the same wire identification. The wire labeling code for each end of the same wire shall be identical. Tubing shall be sized for the wire and shrunk into place with the properly sized heat gun.

6.8 CIRCUIT BREAKERS

- A Circuit Breakers shall be of the indicated type, providing ON, OFF and TRIPPED positions. Circuit breakers shall be quick make, quick break with thermal magnetic action and shall be compatible with existing breaker panel at the power feed facility. The use of tandem or dual circuit breakers in normal single pole space to provide the number of poles or spaces specified are not acceptable. All multiple-pole circuit breakers shall be designed so that an overload on one pole automatically causes all poles to open. Circuit breakers shall be manufactured by Square D or approved equivalent. Breakers shall be sized and have the minimum interrupting capacity as required.

6.9 CONCRETE

- A Concrete shall conform to Caltrans 2018 standard specification for minor concrete, Section 90-2.
- B Concrete mix must exceed the compressive strength requirements of ASTM C 387.
- C Type II Portland cement must be used.
- D Aggregate shall be hard, durable, selected, graded, and free from foreign materials.
- E Water shall be potable and free from foreign materials in amounts harmful to the concrete and embedded steel.
- F Utilize standard designs incorporating mixtures that facilitate the workability, curing, and strength.
- G Forms shall be sized to minimize air pockets and maximize strength.

6.10 ASPHALT AND CONCRETE CUTTING AND REPAIR

- A Shall conform to the latest version of the District's specifications and drawings, and shall comply with County of San Luis Obispo Department of Public Works standards when in County right of way.
- B Perform cutting and demolition by methods that prevent damage to other portions of the Work and provide proper surfaces to receive installation of repair and new work.
- C Perform fitting and adjusting of products to provide finished installation complying with the specified tolerances and finishes.
- D Cuts made through any paved surface must be repaired in a non-discernible fashion. Cuts through concrete must be repaired by replacing the section between the nearest two joints - either construction or expansion. Cuts through asphalt must be repaired so that depressions or humps do not develop in the asphalt surface. If they do, they will have to be corrected, at the Design-Builder's expense.
- E Asphalt and base compaction by "normal traffic" is not permitted. Proper compaction for the depth of the cut is required.
- F When cuts extend through pavement markings, the replaced pavement shall be marked to match the existing

PART 7 INSTALLATION SPECIFICATION

7.1 GENERAL INSTALLATION REQUIREMENTS

- A All safety, electric, building, and labor code requirements at the national, state, and local levels shall be met.
- B The installations shall be completed in a "workman like manner." The areas shall be kept clean and free of obstructions at all times.
- C The installations shall be completed per each manufacturer's installation manual.
- D All electrical connections and terminations shall be fully tightened, secured, and strain relieved as appropriate.
- E All mounting equipment shall be installed to the manufacturer's specifications.
- F All cables, conduit, exposed conductors, and electrical boxes shall be secured and supported according to code requirements.
- G All applicable environmental regulations shall be met.
- H System switching and metering equipment shall have convenient access for resetting or repair during electrical outages, and regular monitoring for data retrieval.
- I The Design-Builder shall employ personnel that are skilled and experienced in the installation and connection of all elements, equipment, devices, instruments, accessories, and assemblies. All installation labor shall be performed by qualified personnel who have had experience on similar projects.
- J Ensure that all equipment and materials fit properly in their installations.

- K Perform any required work to correct improper installations at no additional expense to the Customer.
- L The Owner reserves the right to halt any work that is found to be substandard or being installed by unqualified personnel.

7.2 INSTALLATION STANDARDS

- A System Installations shall conform to Manufacturers' Installation Manuals and approved project drawings and specifications.
- B Mounting hardware shall be compatible with the site considerations and environment. Special attention shall be paid to minimizing the risk from exposed fasteners, sharp edges, and potential damage to the units or support canopies. Corrosion resistance and durability of the mechanical hardware shall be accomplished through the use of stainless steel fasteners, and aluminum support canopies are required. The use of ferrous metals, wood, or plastic components is not acceptable.
- C The installations shall be completed with minimal impact on the environment.

7.3 WASTE DISPOSAL

- A The Design-Builder shall ensure that a minimum of 90% of all waste shall be diverted from landfill (recycled, reused, returned). Any additional waste shall be disposed of offsite at the Design-Builder's expense.
- B The Design-Builder shall implement a recycling program that addresses all returnable or recyclable components that are used in the packaging and delivery of all materials.

7.4 COORDINATION

- A The Design-Builder shall coordinate the electrical work with the other trades, code authorities and Owner, with due regard to their work, and meeting the Contract Time. If any cooperative work must be altered due to lack of proper supervision of such, or failure to make proper provisions, then the Design-Builder shall bear expense of such changes as necessary to be made in work of others.
- B The Design-Builder shall cease work at any particular point, temporarily, and transfer operations to such portions of work as directed, when in the judgment of the Owner it is necessary to do so.
- C The Design-Builder shall schedule all the required work with the Owner, including each shutdown period. Each shutdown shall be implemented to minimize disruption of the existing operations. The Work to be provided under this Contract shall not disrupt any of the existing operations without prior approval.
 - 1 The Design-Builder shall not have any unscheduled shutdowns.
 - 2 Carry out scheduled shutdowns only after the time, date, and sequence of work proposed to be accomplished during shutdown has been favorably reviewed by the Owner. Submit shutdown plans at least 2 days in advance of when the scheduled shutdown is to occur.
 - 3 The Owner reserves the right to delay, change, or modify any shutdown at

any time, at no additional cost to the Customer, when the risk of such a shutdown would jeopardize the operation of the facility.

7.5 SUPERVISION

- A The Design-Builder shall schedule all activities, manage all technical aspects of the project, coordinate submittals and drawings, and attend all project meetings.
- B The Design-Builder shall supervise all work, including the electrical system general construction work, from the beginning to completion and final acceptance.
- C The Design-Builder shall supervise and coordinate all work to ensure each phase of the project, submittal, delivery, installation, and acceptance testing, etc. is completed within the allowable scheduled time frames.
- D The Design-Builder shall be responsible for obtaining, preparing, completing, and furnishing all paper work, which shall include transmittals, submittals, forms, documents, manuals, instructions, and procedures.

7.6 INSPECTIONS

- A All work or materials covered by the Contract documents shall be subject to inspection at any and all times by the Owner. If any material does not conform to the Contract documents, or does not have a favorably reviewed submittal status; then the Design-Builder shall, within three days after being notified by the Owner, remove said material from the premises if directed by Owner to do so; and if said material has been installed, the entire expense of removing and replacing same, including any cutting and patching that may be necessary, shall be borne by the Design-Builder.
- B The Design-Builder shall give the Owner 10 working days' notice of the dates and time for inspection. Date of inspection shall be as agreed upon by the Design-Builder, and Owner.
- C Work shall not be closed in or covered over before inspection and approval by the Owner. All costs associated with uncovering and making repairs where non-inspected work has been performed shall be borne by the Design-Builder.
- D The Design-Builder shall cooperate with the Owner and provide assistance at all times for the inspection of the electrical system under this Contract. The Design-Builder shall remove covers, provide access, operate equipment, and perform other reasonable work that, in the opinion of the Owner, will be necessary to determine the quality and adequacy of the work.
- E The permitting authority shall be notified to perform required inspection either prior to or concurrent with Owner's inspection in the close out process.
- F Before request for final inspection is made, the Design-Builder shall submit to the Owner in writing, a statement that the Design-Builder has made his own thorough inspection of the entire project, enumerating punch list items not complete and that the installation and testing is complete and in conformance with the requirements of this Section.
- G The Owner may arrange for a facility inspection by Cal-OSHA Consultation Service at any time. The Design-Builder shall make the necessary corrections

to bring all work in conformance with Cal-OSHA requirements, all at no additional cost to the Customer.

- H Design-Builder shall be Responsible for any Additional Cost for Overtime, Weekend Overtime or Differential Time, Expenses for Inspection of Defective Work that must be re-inspected.

7.7 JOB CONDITIONS

- A The Design-Builder shall make all arrangements and pay the costs thereof for temporary services required during construction of the project, such as temporary, sanitation, water, electrical power, etc. Upon completion of the project, the Design-Builder must remove all temporary services, equipment, material and wiring from the site as the property of the Design-Builder.
- B The Design-Builder shall provide adequate protection for all equipment and materials during shipment, storage and construction. Equipment and materials shall be stored in a location specified by the Owner and be completely covered with two layers of plastic and set on cribbing six inches above grade so that they are protected from weather, wind, dust, water, or construction operations. Equipment shall not be stored outdoors without the approval of the Owner. Where equipment is stored or installed in moist areas, such as unheated buildings, etc., provide an acceptable means to prevent moisture damage, such as a uniformly distributed heat source to prevent condensation.
- C The normal outdoor, not in direct sunlight, ambient temperature range of the job site vary between 15 to 115 degrees Fahrenheit. All equipment shall be rated to operate in these temperature ranges or provisions for adequate heating and cooling shall be installed, at no additional cost to Customer.

7.8 SAFETY

- A Testing shall conform to the respective manufacturer's recommendations. All manufacturers' safety precautions shall be followed.
- B The procedures stated herein are guidelines for the intended tests, the Design-Builder shall be responsible to modify these tests to fit the particular application and ensure personnel safety. Absolutely no tests shall be performed that endanger personal safety.
- C The Electrical Contractor shall have two or more Electricians present at all electrical field tests.
- D California Electrical Safety Orders ("ESO") and Occupational Safety and Health Act ("OSHA"): The Electrical Contractor is cautioned that testing and equipment shall comply with ESO and OSHA as to safety, clearances, padlocks and barriers around electrical equipment energized during testing.
- E Field inspections and pre-energization tests shall be completed prior to applying power to equipment.

PART 8 SYSTEM OPERATIONS AND MAINTENANCE (ADD ALTERNATE PROPOSAL ITEM 2)

8.1 Logistics

- A The vendor shall provide email notification of onsite work two weeks prior to implementation of the work.

- B The vendor shall notify the District when each site work has been completed.
 - C The vendor shall complete and submit reports within two weeks of the work being completed.
 - D Vendor staff must meet District requirements for security clearances, etc.
 - E Onsite staff must check in at the office prior to beginning work, and must sign out when work is completed and they are leaving the premise.
- 8.2 Cleaning – twice per year.
- A Clean the panels according to the manufacturer's warranty and cleaning instructions, using deionized water. The District will determine cleaning times with input from the selected vendor.
 - B The contractor shall minimize the use of water, and shall properly manage and dispose of cleaning water.
 - C The Vendor shall complete cleaning within one week of the designated date.
 - D Cleaning includes the surface of the panels and the frame.
 - E Vendor shall clear the panels of all debris, including weeds, leaves, cobwebs, hornet nests, trash, etc.
 - F Meet all OSHA/District requirements for electrical, arc flash, and fall protection.
 - G Take photographs of the front and back of all arrays and sub arrays, before and after cleaning.
 - H Take photographs that show the condition of the arrays, sub-arrays, combiner boxes, and inverters upon arrival and after work is completed.
- 8.3 Maintenance and Data Collection – Once per Year
- A Visually inspect the entire array, including the fronts and backs of all panels, racking, wiring, roof penetrations, combiner boxes, disconnects, inverters, roof penetrations, grounding, etc.
 - B Complete a drone fly-over of each system and capture IR images showing the array. The imagery must be of enough detail that individual panels are clearly identified.
 - C Complete all manufacturer recommended maintenance on the panels, inverters, combiner boxes, and disconnects. At a minimum, inverter maintenance shall include the replacement of filters, cleaning of heat sinks, cleaning air intakes, replacing fuses, replacing batteries, and re-torqueing of the inverter lugs.
 - D Inspect and clean existing weather stations and data acquisition system equipment. Ensure that the Solar Radiance meter is at the proper angle to the array.
 - E Manage manufacturer warranty repairs.
 - F Inspect all bolts for tightness and tighten as appropriate.
 - G Identify all security issues

- H Meet all OSHA/District requirements for electrical, arc flash, and fall protection.
 - I Complete data collection per the data collection sheet in Attachment 1.
 - 1 All Strings
 - a. Volts open circuit
 - b. Volts closed circuit
 - c. Amps closed circuit
 - 2 Combiner boxes: Output voltage and amperage of all combined strings
 - 3 Inverter
 - a. Measure output voltage and amperage
 - b. Record the following from the Inverter data screen if available
 - b1. Power output
 - b2. Voltage output
 - b3. Amperage
 - b4. Energy output for day and total
 - 4 Collect the following data at least every fifteen minutes during the data collection
 - a. Panel Temperature (via thermocouple securely attached to the back of a sample panel and allowed to normalize for at least 5 minutes).
 - b. Solar Irradiance in the plane of the array being measured.
 - c. Time.
 - J IR photos of all inverter and electric panel connections.
 - K Replace all blown fuses
- 8.4 Reporting
- A Both work components (cleaning, maintenance and data collection) shall require a report within two weeks of the work being completed.
 - B Cleaning
 - 1 Provide a narrative that includes a short paragraph each on: the system condition, the soiling prior to cleaning, and the success of the cleaning. Take pictures of the front and back of all arrays and sub arrays, before and after cleaning.
 - 2 Summary of significant issues that were identified during the site visit, including code violations, wear and tear, etc.
 - 3 Recommended actions to address issues.
 - C Maintenance and data Collection
 - 1 Report Narrative Sections
 - a. Visual Inspection: Note the condition of the PV system. Identify any broken panels and any deferred maintenance items. Note any

- inverters that were offline or in “alarm” or “error” mode.
 - b. String measurements: Comment on all anomalies in data measurement. Provide recommendations on how to resolve issues, or how they were resolved.
 - c. IR imaging of electrical connections: Comment any hot spots. (providing comments directly on images, or just below images may be sufficient).
 - d. Drone Imaging: Provide comments on any hot spots, what the issues may be, and troubleshooting efforts to identify or resolve issues (providing comments directly on images, or just below images may be sufficient).
 - e. Provide a summary of all maintenance actions taken.
 - f. Provide a summary of maintenance actions that remain.
- 2 Images and data collection
- a. Pictures: provide current photos of the system in total, and the inverter installation area, and any other photos that will help to understand the condition of the system.
 - b. IR Photos
 - c. Drone Images
 - d. Copy of data collection sheet in excel.

PART 9 METERS, MONITORING, AND DATA AQUISION

9.1 PV DATA ACQUISITION SYSTEM (“DAS”)

- A A DAS shall be provided as part of the System, and shall be Powertrack, provided by Also Energy, or equal. Monitoring and reporting must be included for the term of the agreement. A monitoring and reporting service is acceptable as long as the service options meet the following requirements. The DAS must have the ability to send e-mail and SMS alarms, and diagnostic data to the District’s designated maintenance persons. The DAS shall include instrumentation (with a stability < 2% change over a one year period) that allows the measurement of:
- 1 The DAS shall capture and display performance information on a maximum of inverter level increments.
 - 2 Ambient temperature - accuracy $\pm 2^{\circ}\text{C}$
 - 3 PV module temperature - accuracy $\pm 2^{\circ}\text{C}$
 - 4 Wind speed - starting threshold 2.98 mph & accuracy < 5%
 - 5 Plane of array solar irradiation (accuracy $\pm 5\%$)
 - 6 A Net Energy package with the ability to monitor the energy used by the facility in all utility time-of-use periods.
 - 7 Monitoring must provide string level output and alarms.
 - 8 Inverter level monitoring.

- B All measurement equipment must be “revenue” grade.
- C AC Power/Energy (including current transformers): Accuracy $\pm 2\%$
- D The DAS shall capture and store data on 15-minute intervals.
- E Real-Time display shall provide the following information. This information can be viewed via the Internet for the entire term of the warranty period. The Design-Builder shall use a regression to establish the system rating at PV-USA Test Conditions as the basis for projecting system output.
 - 1 Instantaneous system output in kW
 - 2 Instantaneous irradiation in watts/square meter
 - 3 Instantaneous ambient temperature in degrees Fahrenheit
 - 4 Instantaneous wind speed
 - 5 Daily and year-to-date system output in kWh
 - 6 Data shall be provided in a format that easily facilitates graphing and analysis in third party database or spreadsheet programs.
 - 7 Alarms shall be set up to automatically notify facility staff and the Owner of faulty operation. Specific Alarms shall include:
 - a. Inverter output is outside of projected output by more than 10% based on existing irradiance and temperature
 - b. Inverter shut down

PART 10 PROJECT CLOSEOUT

10.1 CLEANING AND TOUCH-UP

- A Clean the solar Panels per the manufacturer’s instructions using deionized water.
- B Clean all work areas and remove any debris.
- C Prior to startup and completion of the work, and subsequent to final acceptance, all parts of the installation, including all equipment, exposed conduit, devices, and fittings shall be cleaned and given touch up by Design-Builder as follows:
 - 1 Remove all grease and metal cuttings.
 - 2 Any discoloration or other damage to parts of the building, the finish, or the furnishings shall be repaired. Thoroughly clean any exposed work requiring repairs.
 - 3 Vacuum and clean the inside of all panel and electrical enclosures.
 - 4 Clean all above and below ground pull boxes and junction boxes from all foreign debris prior to final acceptance.
 - 5 Paint all scratched or blemished surfaces with the necessary coats of quick drying paint to match adjacent color, texture, and thickness. This shall include all primed painted electrical equipment, including enclosures, panels, poles, boxes, devices, etc.

- 6 Repair damage to factory finishes with repair products recommended by Manufacturer.
- 7 Repair damage to PVC or paint finishes with matching touchup coating recommended by Manufacturer.

10.2 FINAL ACCEPTANCE

- A Final acceptance shall be given by the Owner after the equipment has passed the final acceptance trial period of one week, each deficiency has been corrected, final documentation has been provided, and all the requirements of design documents have been fulfilled.
- B Upon completion of the project, prior to final acceptance, remove all temporary services, equipment, material, and wiring from the site.
- C At the end of the project, following the completion of all of the field tests, and prior to final acceptance, the Design-Builder shall provide the following final documentation to the Owner:
 - 1 A listing of warranty information.
 - 2 Each "operation and maintenance" manual shall be modified or supplemented by the Design-Builder to reflect all field changes and as-built conditions.
- D Acceptance by Owner shall be based on:
 - 1 All operational tests performed to the satisfaction of Owner.
 - 2 Receipt of all final documentations listed above.
 - 3 Receipt of all spare parts.
 - a. 10 fuses for the inverter.
 - b. 10 fuses for combiner boxes, if applicable.
 - c. 10 spare panels.
 - d. 10 each of male and female panel connectors.
 - e. 20 each of panel mounting clamps with bolts, or bolts and nuts, if the design does not use clamps.

PART 11 SYSTEM START-UP

11.1 START-UP FORMS

- A Complete start-up and testing forms included Exhibit 2.
- B Bill of Materials: Include modules, inverters, disconnects, DAS, and combiner boxes.
- C Power conductor test form: Design-Builder shall complete a megger test on all wiring at 500 volts for 10 seconds. Each reading shall be a minimum of 100 Meg-Ohms.
- D Grounding system test form
 - 1 Visual and Mechanical Inspection.
 - a. Verify ground system is in compliance with drawings and

specifications.

2 Electrical Tests

- a. Before making connections to the ground electrodes, and before placement of sidewalks, landscape and paving, measure the resistance of each electrode to ground using a ground resistance tester. Perform the test not less than two days after the most recent rainfall and in the afternoon after any ground condensation (dew) has evaporated.
- b. After all individual ground electrode readings have been made, interconnect as required and measure the system's ground resistance.
- c. Perform point-to-point tests to determine the resistance between the main grounding system and all major electrical equipment frames, system neutral, and/or derived neutral points.
- d. The grounding test shall be in conformance with IEEE Standard 81.
- e. Plots of ground resistance shall be made and submitted to the Owner for approval.
- f. The current reference rod shall be driven at least 100 feet from the system under test.
- g. Measurements shall be made at 10 foot intervals beginning 25 feet from the test electrode and ending 75 feet from it in a direct line between the system being tested and the test electrode.

3 Test Values

- a. The resistance between the main grounding electrode and ground shall be no greater than five ohms for commercial or industrial systems per IEEE Standard 142.
- b. Investigate point-to-point resistance values that exceed 0.5 ohms.

E System Visual and Mechanical Inspection Form: Complete Forms for all equipment listed below.

- 1 PV System: complete a form for the inspection of the PV system. Include inspection of all DC connections, conduit, modules, etc.
- 2 Combiner Box: Complete a form for each combiner box.
- 3 Inverter: Complete a Form for each Inverter.
- 4 Disconnects: Complete a form for each AC Disconnect
- 5 Main Panel

F System Output Measurement Form: The design-build contractor shall establish the initial system output to demonstrate that the system is performing as designed, and to establish a baseline to be used for warranty.

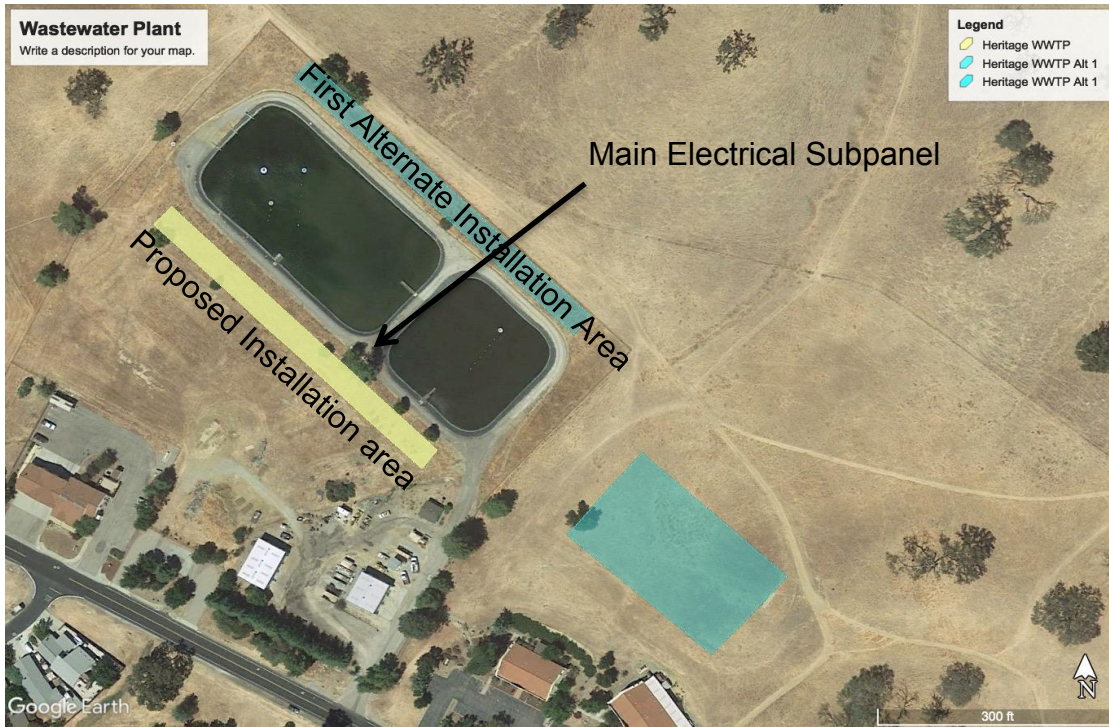
- 1 The system output shall be verified after construction of the system has been completed, on a clear, sunny day, with a minimum insolation of 700 watts per square meter.

- 2 Data to be collected shall include:
 - a. Volts open circuit
 - b. Volts maximum power (use max of instantaneous reading)
 - c. Current at maximum power (use the min of instantaneous reading)
 - 3 Voltages and currents shall be measured for each string, combiner box circuit, and the entire array.
 - 4 Irradiance measurements shall be in the plane of the array.
 - 5 Time, irradiance, and temperature measurements must be taken at a minimum of 15-minute intervals.
- 11.2 Start-up shall be per all manufacturers' instruction.
- 11.3 System start-up procedure shall be as outlined by the Manufacturer's installation manual and the inverter manual.
- 11.4 Commission inverters per factory instructions.
- 11.5 Start-up sheets per Exhibit 2.

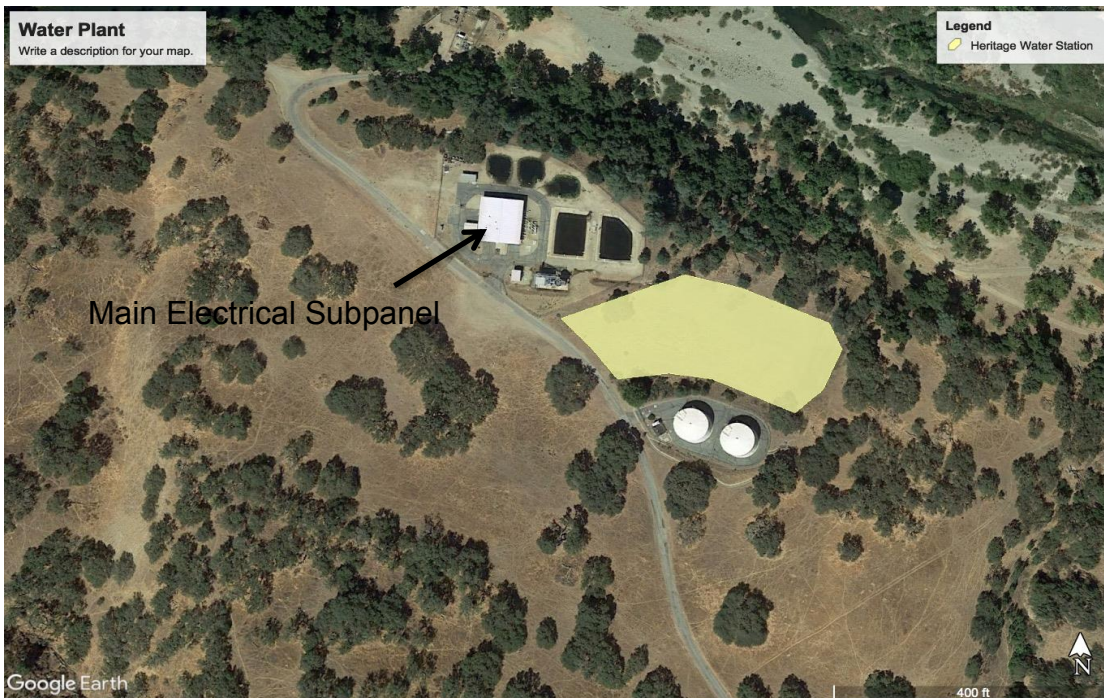
Exhibit 1

Potential Solar Locations Evaluated at the District

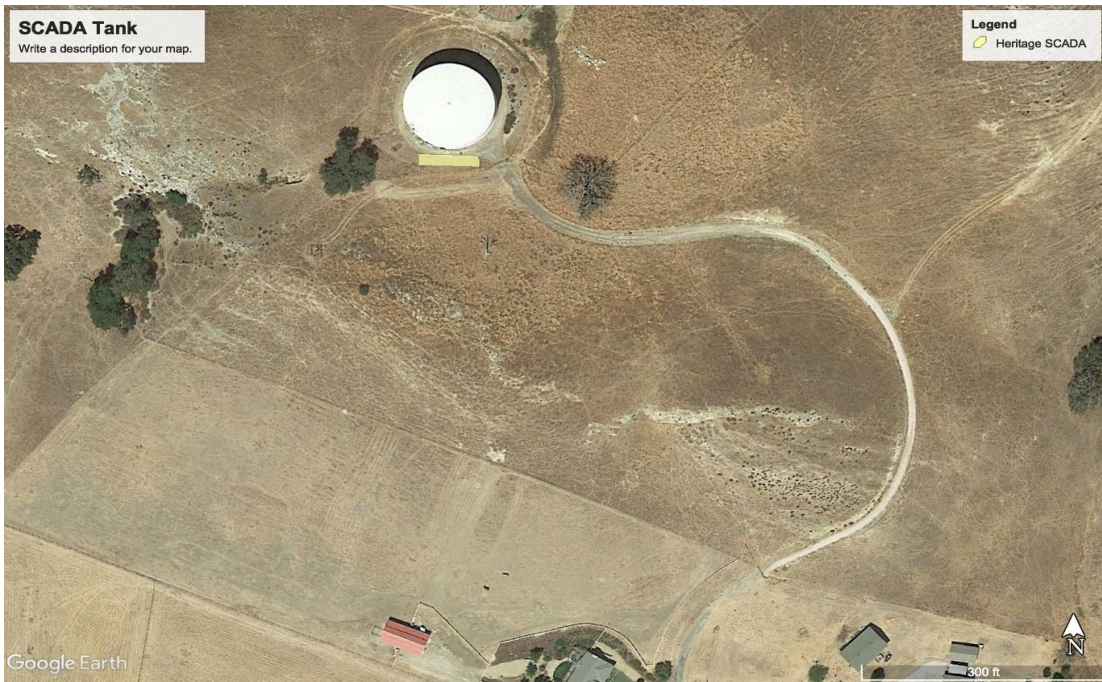
Wastewater Treatment Plant and Office



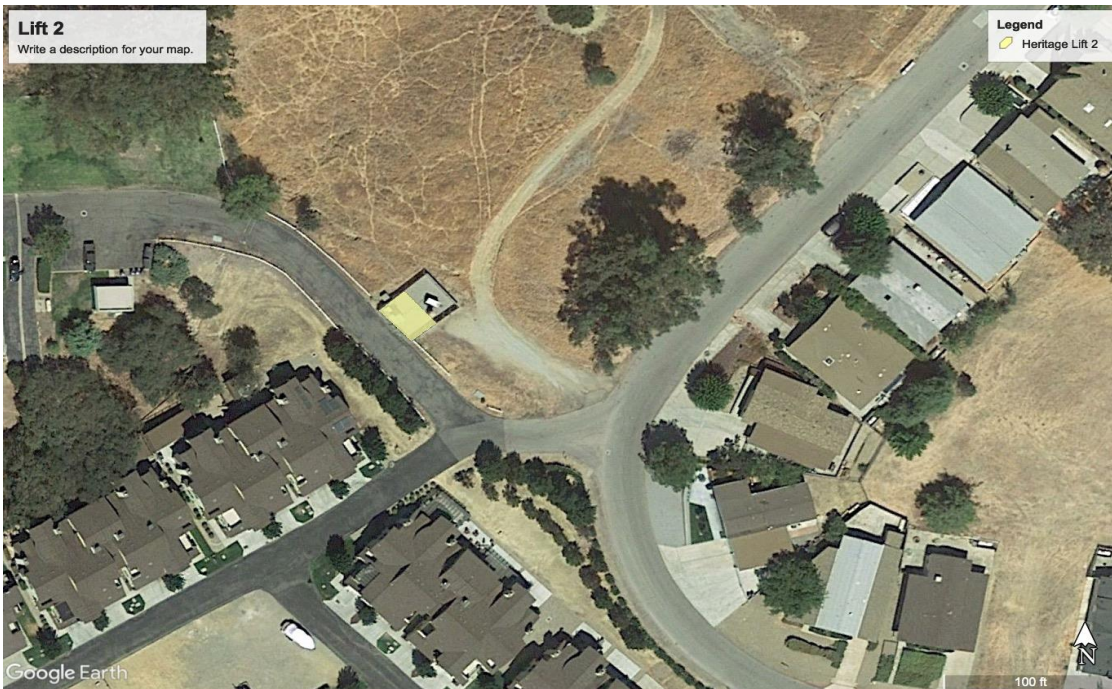
Water Treatment Plant, Pump Station 1, and Pump Station 4



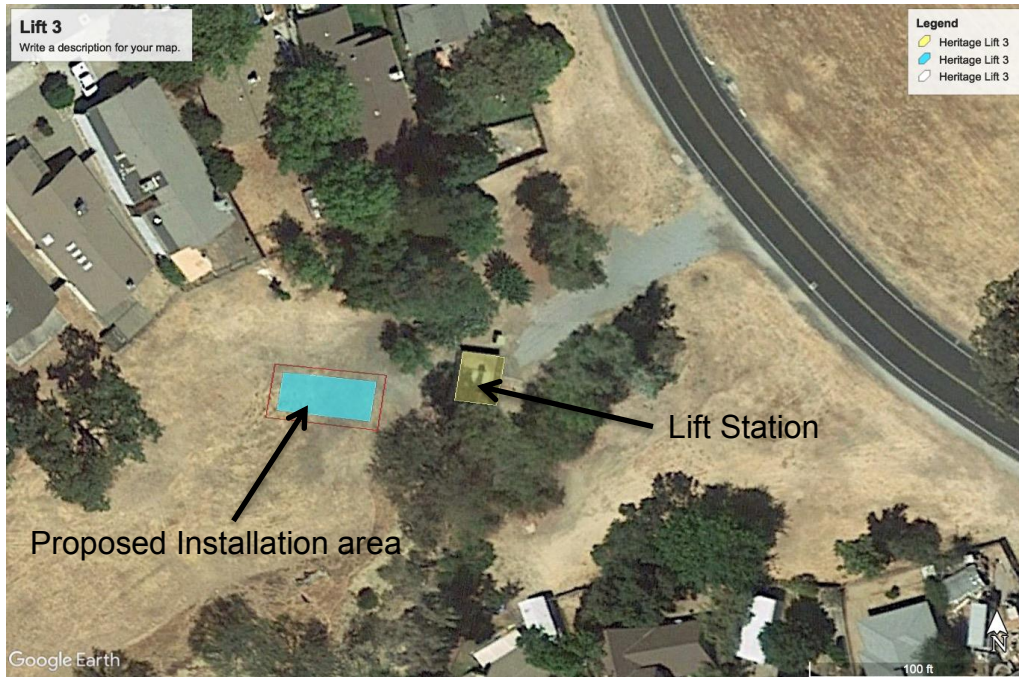
SCADA



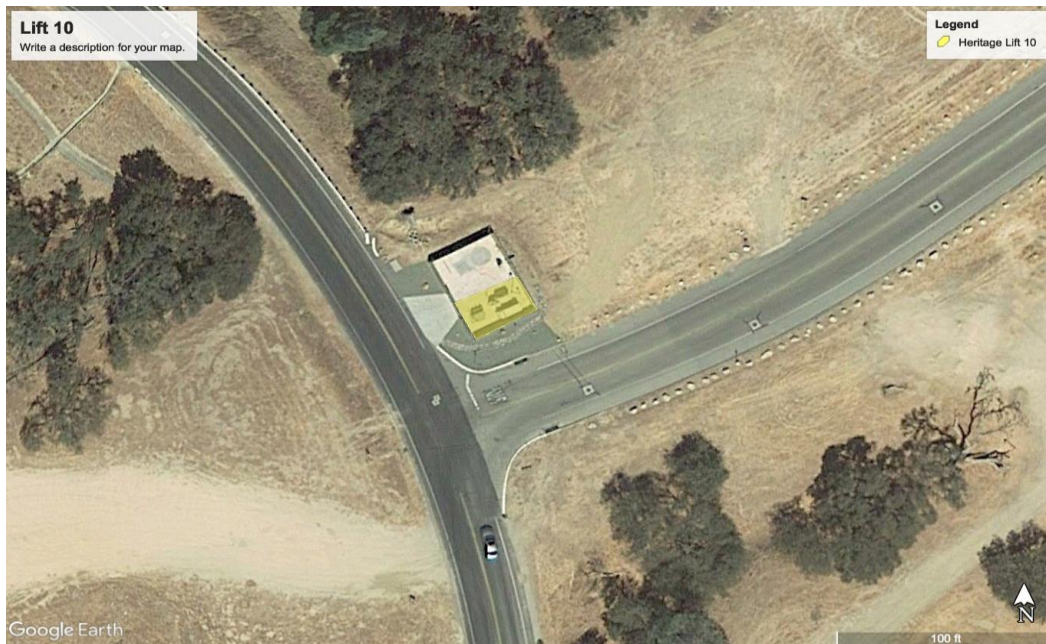
Lift Station 2



Lift Station 3



Lift Station 10



Pump Station 6



Lift Station 1



Exhibit 2

Start Up Sheets

POWER CONDUCTOR TEST FORM						
EQUIPMENT NAME:				LOCATION		
CONDUCTOR NUMBER	INSULATION TESTS					
	PHASE TO GROUND			PHASE TO PHASE		
	A	B	C	AB	BC	CA
NOTES: RECORD INSULATION TEST VALUES IN MEG-OHMS						
TESTED BY:				DATE:		

WITNESS:	

GROUNDING SYSTEM TEST FORM					
TEST FORM (TF3)					
FALL IN POTENTIAL TEST					
MAIN GROUND LOCATION	APPLIED VOLTAGE V	MEASURED POINT VOLTAGE	MEASURED POINT 2 VOLTAGE	MEASURED POINT 3 VOLTAGE	CALCULATED RESISTANCE OHMS
TWO POINT TESTS					
EQUIPMENT NAME	EQUIPMENT #	CIRCUIT NUMBER	APPLIED CURRENT	MEASURED VOLTAGE	CALCULATED RESISTANCE
NOTES:					
TESTED BY:				DATE:	
WITNESSED BY:					

VISUAL AND MECHANICAL INSPECTION FORM	
EQUIPMENT NAME:	LOCATION:
NAMEPLATE DATA	
MFG:	SERIES #:
MODEL #:	U.L.#:
VOLTAGE:	PHASE:
AMPERAGE:	SERVICE:
GRD. BUS:	NEU. BUS:
INSPECTION CHECK LIST ENTER: A-ACCEPTABLE, R-NEEDS REPAIR OR REPLACEMENT, NA-NOT APPLICABLE	
TIGHTEN ALL BOLTS AND SCREWS	
TIGHTEN ALL CONDUCTOR AND BUS CONNECTIONS	
CHECK BUS BRACING AND CLEARANCE	
CHECK MAIN GROUNDING AND CONNECTION SIZE	
INSPECT GROUND BUS BONDING	
CHECK EQUIPMENT GROUNDS	
CHECK CONDUIT GROUNDS AND BUSHINGS	
INSPECT NEUTRAL BUS AND CONNECTIONS	
CHECK VENTILATION AND FILTERS	
CHECK FOR BROKEN/DAMAGED DEVICES	
CHECK DOOR AND PANEL ALIGNMENT	
INSPECT ANCHORAGE	
CHECK FOR PROPER CLEARANCES	
REMOVE ALL DIRT AND DUST ACCUMULATION	
INSPECT ALL PAINTED SURFACES	
CHECK FOR PROPER WIRE COLOR CODES	
INSPECT ALL WIRING FOR WIRE LABELS	
CHECK FOR PROPER TERMINATIONS	
CHECK FOR PROPER WIRE SIZES	
INSPECT ALL DEVICES FOR NAMEPLATES	
CHECK IF DRAWINGS MATCH EQUIPMENT	
CHECK ACCURACY OF OPERATION & MAINTENANCE	
TESTED BY:	DATE:
WITNESSED BY:	

SYSTEM OUTPUT FORM							
DATE:							
Panel Make and Model:							
STRING #	PANELS PER STRING	TIME	PANEL TEMP	INSOLATION – W/SF POA	VOLTS OPEN CIRCUIT	VOLTS CLOSED CIRCUIT	AMPS CLOSED CIRCUIT
TESTED BY:					DATE:		
WITNESSED BY:					DATE:		

BILL OF MATERIALS

PROJECT: _____

DATE: _____

LOCATION: _____

PAGE: _____

SPECIFICATION SECTION	QTY	DESCRIPTION	MFG	PART #	TAG #