

ADDENDUM No. 2

Date: September 7, 2008

***Modular Health Services Clinics and Administration
Avenal State Prison***

All project documents dated July 25, 2008, April 1, 2008, and July 30, 2008, including Project Manual, contract documents, plans, and specifications, and other documents shall remain unchanged with the exception of those elements added, revised, deleted, or clarified by this addendum.

Clarifications, corrections, modifications, deletions, or additions included in this addendum shall be incorporated in the contract documents as noted. Data included herein supersedes previously issued data, otherwise, the Project Manual, Plans, and Specifications and other documents shall remain unchanged.

Contractors are hereby notified that this addendum shall be taken into consideration in submitting bids/proposals for the above project. Contractors are required to acknowledge receipt of the addendum in the space provided in the Bid Proposal.

Contractors who would like to receive all or any part of this Addendum via email are requested to contact Scott Murphy at scott.murphy@vanir.com.

ADDENDUM No. 2

Date: September 7, 2008

**Modular Health Services Clinics and Administration
Avenal State Prison**

Project Manual

CONTRACTING REQUIREMENTS

Document 005213 AGREEMENT FOR DESIGN BUILD SERVICES

1. *Agreement for Design Build Services (located on page 1):*
 - a. Delete entire selection and replace with attachment (#1)

Document 007300 RELEASE OF CLAIMS

1. Replace existing (*page 9*) of this section with amended attachment (#2)

SPECIFICATIONS

Division 08 DOORS AND WINDOWS – SECTION 085200 ALUMINUM WINDOWS – 2.3
FABRICATED COMPONENTS

1. Delete "(A.) 1. *Single Hung; AAMA 101; DH-HC40*"

DRAWINGS

Sheet A3.1 A Clinic A Schedules

1. In the door schedule, under the 'comments' column; *amend all doors stating "1 HOUR RATED ASSEMBLY"* except door (42) and (50) to *"20 MINUTE ASSEMBLY"*
2. In the door schedule, under the comments column; amend door (42) and (50) to state *"90 MINUTE ASSEMBLY W/ MAGNETIC HOLD OPEN"*

Sheet A3.1 B Clinic B Schedules

1. In the door schedule, under the 'comments' column; *amend all doors stating "1 HOUR RATED ASSEMBLY"* to *"20 MINUTE ASSEMBLY"*

Sheet A3.1 C Administration Schedules

1. In the door schedule, under the 'comments' column; *amend all doors stating "1 HOUR RATED ASSEMBLY"* to *"20 MINUTE ASSEMBLY"*

Sheet A3.1 D Ad. Seg. Schedules

1. In the door schedule, under the 'comments' column; *amend all doors stating "1 HOUR RATED ASSEMBLY"* to *"20 MINUTE ASSEMBLY"*

END OF ADDENDUM

Agreement for Design-Build Services

AGREEMENT

made as of the ___ day of _____ in the year Two Thousand and _____,

BETWEEN

"CPR":

California Prison Health Care Receivership Corporation
P.O. Box 4038
Sacramento, CA 95812-4038
Telephone: (916) 323-1221
Facsimile: (916) 323-1257

and the "Design-Builder":

[Insert Design-Builder Name]
[Address]
[City, State ZIP]
Telephone:
Facsimile:
Authorized Representative:

The "Project" is:

Design and Construction of [Insert Project Description and Location]

The "Program Manager" is:

Vanir Construction Management, Inc.
4540 Duckhorn Drive, Suite 300
Sacramento, CA 95834
Telephone: (916) 575-8888
Facsimile: (916) 575-8887
Authorized Representative:

The Design-Build Team consists of:

CPR
Program Manager
Design-Builder

"Architect":

[Insert Architect Name]

[Address]

[City, State ZIP]

Telephone:

Facsimile:

Authorized Representative: _____

"General Contractor":

(if different from Design-Builder)

[Insert General Contractor Name]

[Address]

[City, State ZIP]

Telephone:

Facsimile:

Authorized Representative: _____

Contract Time:

_____ calendar days from the date of Notice to Proceed.

Contract Sum:

\$ _____ (_____ Dollars)

Change Order OH&P:

Self-performed work:

Materials/Equipment: **16%**

Labor: **21%**

Subcontract work: **6%**

Liquidated Damages for Delay:

\$ _____ (_____ dollars) per calendar day

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EXHIBITS

Exhibit A -	Project Description; Scope of Work
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DESIGN-BUILD AGREEMENT

This AGREEMENT, effective as of the date set forth above, is between CPR and Design-Builder who state and agree as follows.

ARTICLE 1 GENERAL PROVISIONS

1.1 CPR; Design-Builder

- .1 The United States District Court for the Northern District of California has established a Receivership to assume the executive management of the California state prison medical system and raise the level of care up to constitutional standards. On February 14, 2006, the Court appointed the Receiver and granted him, among other powers, the authority to exercise all powers vested by law in the Secretary of the California Department of Corrections and Rehabilitation ("CDCR") as they relate to the administration, control, management, operation, and financing of the California state prison medical health care system. The Receiver caused the formation of CPR, which provides staff and infrastructure to assist the Receiver in discharging his court-appointed function. CPR thereafter engaged Program Manager to serve as program manager for certain of CPR's capital projects. CPR has designated Program Manager as its representative to act on its behalf with respect to the Project.
- .2 By way of a written request for proposals ("RFP"), a copy of which is attached to **Exhibit A** and incorporated herein by this reference, CPR requested that a firm or firms with the qualifications to meet the requirements of the RFP submit proposals to provide services described in the RFP. After evaluating the respondents, CPR selected Design-Builder, and CPR now wishes to retain Design-Builder to provide services to CPR in connection with the Project. Design-Builder shall perform its services pursuant to this Agreement under the direction and management of Program Manager and for the benefit of CPR. Design-Builder is an independent contractor and not an agent, servant or representative of CPR or Program Manager. Design-Builder will have no authority legally to obligate CPR except as specified in this Agreement or as otherwise specified in writing by CPR from time to time. Design Builder's authorized representative for the Project is designated in the preamble. Design Builder's authorized representative shall be the primary contact with CPR and Program Manager, and is authorized to bind Design Builder for all matters pertaining to the Project and/or this Agreement. No person shall be substituted for such authorized representative without CPR's prior written consent.
- .3 By executing this Agreement, Design-Builder represents that it has carefully examined all of the Contract Documents and has fully acquainted itself with all the conditions under which the Work is to be performed, including without limitation, applicable laws, regulations, codes and other restrictions, local labor conditions, local weather patterns, access restrictions to and from the Project site, existing improvements, obstructions, subsurface and other conditions relevant to the Work, the site of the Work and its surroundings, and Design-Builder assumes the risk of any variance between the actual conditions discoverable upon such a review and the conditions shown or represented in the Contract Documents; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in this Agreement, or in any representations, statements or information made or furnished by CPR notwithstanding, Design-Builder will complete the Work for the Contract Sum, and assume full and complete responsibility for all conditions relating to the Work, the site of the Work or its surroundings, and all risks in connection therewith.

1.2 The Design-Build Team

The Design-Build team members are those entities identified as such in the preamble to this Agreement. Design-Builder, General Contractor or Architect may engage other subcontractors or subconsultants necessary to complete the Work.

1.3 Relationship of Parties

CPR and Design-Builder agree to proceed with the Project on the basis of trust, good faith, and fair dealing, and agree to cooperate with each other in furthering the interests of the Project. Design-Builder shall furnish the design and construction and use Design-Builder's best efforts to perform the Work in an expeditious manner in accordance with the Contract Documents. CPR and Design-Builder shall endeavor to promote harmony, collaboration, and cooperation among CPR, Program Manager, Design-Builder and other persons or entities employed by CPR or Design-Builder for the Project.

1.4 Extent of Agreement

This Agreement represents the entire, integrated agreement between CPR and Design-Builder for the Work and supersedes all prior negotiations, representations, or agreements. This Agreement shall be superseded or amended only by written instrument signed by both CPR and Design-Builder.

1.5 Design Responsibility

Each of the parties acknowledges that CPR, not being skilled in such matters, is relying upon Design-Builder for the technical and professional adequacy of the architectural and engineering services to be provided hereunder. Neither CPR nor its consultants shall perform any duties of the Design-Builder, or assume any responsibility or liability for the professional or technical adequacy of the Design-Build Documents (defined below) prepared by Design-Builder's Design Professionals. Architectural and engineering services shall be procured from licensed, Design Professionals retained by Design-Builder or as permitted by the laws of California. The standard of care for architectural and engineering services performed under this Agreement shall be the care and skill ordinarily used by members of the architectural and engineering professions practicing in metropolitan areas of California experienced in providing services for facilities of this size, type, complexity, and construction process.

The liability of the Design Professionals shall be limited in connection with any and all claims by CPR, including claims for damages, attorney's fees, court costs, expert witness fees, and any other damages or expenses, based upon an alleged design defect, error, omission, or professional negligence in connection with performing the services required by the Project, whether alleged in negligence, breach of contract, breach of warranty, or on some alternative legal theory, to the insurance limits specified for Design-Builder as required by Article 13.

1.6 Definitions

- .1 *Architect* means the firm or individual retained by Design-Builder as architect of record for the Project, and identified as "Architect" in the preamble.
- .2 *Compensable Delay* means an Excusable Delay to the extent caused by (a) the wrongful acts or omissions of CPR, Program Manager, or CPR's consultants; (b) issuance of CPR-initiated Change Orders or Construction Change Directives, or (c) directions to suspend the Work not attributable to the fault or neglect of Design-Builder or anyone for whom Design-Builder is responsible.
- .3 Contract Documents consist of:
 - (a) Written amendments to this Agreement including exhibits and appendices, if any, signed by both CPR and Design-Builder, fully executed Change Orders, and Construction Change Directives.
 - (b) This Agreement.
 - (c) Supplementary and other Conditions, Schedules, Performance Bond, Payment Bond, or other documents listed in the Agreement.
 - (d) Executed Work Authorizations.
 - (e) The final approved Construction Documents.

- (f) The RFP, including any addenda thereto.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above, except that if one of the Contract Documents imposes a stricter requirement on Design-Builder than another Contract Document, such stricter requirement shall control.

- .4 *Contract Sum* is the lump-sum price set forth in the preamble to this Agreement and further defined in Section 4.1.
- .5 *Contract Time* is the period of time allotted in the Contract Documents for Final Completion of the Work, and as modified pursuant to this Agreement.
- .6 *CPR* is identified as such in the preamble to this Agreement and is referred to throughout the Contract Documents as if singular in number.
- .7 *CPR's Program* is an initial description of CPR's objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and Site requirements, as expressed in the RFP. Design-Builder shall promptly notify CPR, and obtain CPR's prior written approval, of any proposed changes to the design or construction of the Project that conflict with or deviate from CPR's Program.
- .8 *Day* shall mean calendar day, unless otherwise specifically defined.
- .9 *Defective Work* is any portion of the Work not in conformance with the Contract Documents as more fully described in Article 17.
- .10 *Delay* means any and every kind of delay, obstruction, hindrance, interference, loss of productivity, or inefficiency.
- .11 *Design-Build Documents* are those documents or other instruments of service (including those in electronic form) to be prepared by Design Professionals during the pre-construction phases, including:
- (a) *Concept Documents*, which may include the graphic and pictorial portions of the design, showing the general design, location and relationship of spaces, generally including plans, elevations and sections, included in the RFP.
 - (b) *Schematic Drawings* - the graphic and pictorial portions of the design showing the design, location, relationship of spaces, dimensions of the work, building systems proposed to be used, specifications of systems and materials proposed to be used generally including plans, elevations, sections, details and schedules prepared by the Design-Builder and submitted as part of its proposal.
 - (c) *Construction Documents* - the final set of drawings and specifications prepared by the Design-Builder for regulatory approval and construction.
- .12 *Design-Build Subcontractor* is an entity engaged to provide design and construction services for a portion of the Project, under contract with Design-Builder or a Subcontractor or Sub-subcontractor, and duly licensed by the State of California to provide such services.
- .13 *Design Professional(s)* includes Architect, Design-Build Subcontractors, and all other firms or individuals furnishing design services (including Architect's Consultants) in connection with the Project.
- .14 *Design Schedule* is the schedule developed by Design-Builder and reviewed and accepted by CPR showing the duration of all activities during the design phase, including all agreed upon durations for CPR and agency review and comment.

- .15 *Drawings* are the graphic and pictorial portions of the Design-Build Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- .16 *Excusable Delay* means any delay in Final Completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of Design-Builder such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, which were not and could not in the exercise of reasonable diligence have been foreseen by Design-Builder at the time the Contract Time is set. An Excusable Delay may also be due to adverse weather, provided Design-Builder satisfies the provisions of Article 12. The financial inability of Design-Builder, Design Professionals, or any Subcontractor, Sub-subcontractor or Material Supplier and any default of any of them, without limitation, shall not be deemed conditions beyond Design-Builder's control. An Excusable Delay may entitle Design-Builder to an extension of the Contract Time, in accordance with Article 12, but shall not entitle Design-Builder to any additional monetary compensation unless it is also a Compensable Delay.
- .17 *Final Completion* of the Work occurs on the date after Substantial Completion when the Project improvements under this Agreement are finally complete and accepted by CPR, and all close-out requirements have been satisfied. Design-Builder shall achieve Final Completion of the Work within fifteen (15) days after Substantial Completion.
- .18 *Indemnified Parties* are CPR, Program Manager, the State of California, and each of their venturers, parents, affiliates, subsidiaries and agents, and all shareholders, officers, directors, employees and managers of each.
- .19 *Inexcusable Delay* means any delay on the Project which is neither an Excusable Delay nor a Compensable Delay. An Inexcusable Delay shall not entitle Design-Builder to an extension of the Contract Time or additional monetary compensation.
- .20 *Legal Requirement* means each and every law, code (including building codes and standards), rule, regulation, requirement, order, judgment, decree, or ordinance of every kind issued by any government entity applicable to or affecting the Project, the Site, the Contract Documents, and/or the Work (including any of the foregoing which concern health, safety, environmental protection, and nondiscrimination).
- .21 *Material Supplier* is a person or entity retained by Design-Builder, its General Contractor, its Subcontractors or Sub-subcontractors to provide material or equipment for the Work.
- .22 *Program Manager* is identified as such in the preamble and will represent CPR throughout design and construction of the Project and may be changed by CPR by providing written notice. Program Manager shall have the authority described in Section 3.2.
- .23 *Project*, as identified in this Agreement, is the building, facility and/or other improvements for which Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by CPR or separate contractors.
- .24 *Site* is the physical location where the Project is to be constructed, as well as adjacent property or facilities specifically identified for use in connection with the Project, as identified in the RFP.
- .25 *Specifications* are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- .26 *Subcontractor* is a person or entity who has a direct contract with Design-Builder or its General Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term

Subcontractor does not include Architect's consultants, or any separate contractor employed by CPR or any separate contractor's subcontractors.

- .27 *Substantial Completion* of the Work, or of a designated portion, is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so CPR can occupy or utilize the Work for its intended use, and only minor corrective Work remains to be performed, all required approvals, certificates of occupancy and other sign-off from any public agencies with jurisdiction have been obtained, and Design-Builder has cleaned up and removed all equipment, tools and other materials from the Work area which are not required for corrective Work. Design-Builder shall secure and deliver to CPR written warranties and guaranties from its General Contractor, Subcontractors, Sub-subcontractors and Material Suppliers bearing the date of Substantial Completion or some other date as may be agreed to by CPR and stating the period of warranty as required by the Contract Documents. Design-Builder is responsible for the warranty of all Work, whether performed by its General Contractor or its Subcontractors or Sub-subcontractors.
- .28 *Sub-subcontractor* is a party or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- .29 The *Work* means the development of design and construction of the Project, as described herein and elsewhere in the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Design-Builder to fulfill Design-Builder's obligations under this Agreement. The Work may constitute the whole or a part of the Project.

ARTICLE 2 DESIGN-BUILDER'S RESPONSIBILITIES

Design-Builder shall perform the services described in this Article.

2.1 General

2.1.1 Design-Builder agrees to furnish, or cause to be furnished, the design (including structural, mechanical, electrical, plumbing and other applicable disciplines), and construction of the Project; to furnish efficient business administration and superintendence; and to complete the Work in a reasonable, expeditious manner consistent with the Contract Documents and the interests of CPR as expressed in this Agreement and the RFP.

2.1.2 Design-Builder shall implement a design and construction schedule to achieve Substantial Completion and Final Completion of the Work in accordance with the Contract Documents. Design-Builder shall coordinate the services of the Design Professionals. CPR shall be responsible for making prompt decisions and approvals so as to maintain the Schedule, within the time frames agreed upon in the approved Design Schedule.

2.1.3 Design-Builder shall participate in regular Project meetings or as required in the Contract Documents.

2.1.4 Each phase of the Project shall commence on the issuance of a Work Authorization/Notice to Proceed ("WA/NTP"). A separate WA/NTP will be issued for each of (i) the Design Phase, (ii) the Construction Phase, and (iii) during the Construction Phase, those portions of the Work, if any, that are phased. No Work or services shall be performed in the design or construction phases except pursuant to a WA/NTP. The WA/NTP may include: (a) the specific scope of Work and services authorized, (b) the deliverables required in connection with such scope of Work and services, (c) the payment terms for such scope of Work and services, (d) date of commencement and the completion dates for authorized Work, or (e) any other matters CPR deems important. A WA/NTP may be issued for all or any portion of the Work.

2.2 Design Phase

2.2.1 Preliminary Schedule. Design-Builder shall prepare a preliminary schedule of the Work for CPR's review ("Schedule"), which includes a detailed Design Schedule. CPR shall provide comments and, once acceptable, written approval of milestone dates established in the preliminary schedule of the Work. The schedule shall show the activities of CPR, Design Professionals, and Design-Builder necessary to meet CPR's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates a previously approved schedule will not be met, Design-Builder shall provide a written explanation and recommend corrective action to CPR.

- .1 Design Schedule/Contents. The Design Schedule shall be maintained in a format reasonably acceptable to CPR and shall describe:
 - (a) Interrelationships of Design-Builder and CPR's activities;
 - (b) Duration for all phases of Design which shall also indicate the time required by CPR to review and approve submissions and the time required to obtain approval of authorities having jurisdiction over the Project;
 - (c) Projected dates for intermediate delivery to CPR for its review of design-in-progress documents for the Design Development and Construction Document phases and the projected time for review and approval of such documents by CPR after receipt; and
 - (d) Critical dates by which CPR must furnish information or approvals in order to maintain the Design Schedule.

2.2.2 Schematic Design. The schematic design, if required by the RFP, will be submitted by the Design-Builder as part of its proposal to CPR. These schematics are the basis for the CPR in selecting the design-build team, along with other established criteria. The Schematic Design Documents shall include the deliverables and level of detail described in the RFP. Upon execution of this agreement, the Design-Builder will proceed with design development, considering the feed back and review from the CPR on the schematic design.

2.2.3 Design Development. Design-Builder shall prepare Design Development Documents that further develops and details the design and shall include the deliverables and level of detail consistent with CPR's requirements and design-build industry standards. Design-Builder shall submit the Design Development Documents to CPR for review and approval.

2.2.4 Construction Drawings and Specifications. Upon written approval of the Design Development Documents and written authorization from CPR, Design-Builder will prepare working Drawings and Specifications setting forth in detail the requirements for the construction of the Work, based upon applicable codes, laws, and regulations. These Construction Drawings and Specifications, upon approval by CPR and by the governing governmental authorities, will constitute a portion of the "Contract Documents" and will be used for construction. In case of discrepancies in quantity or quality between the other contract documents as defined in 1.5.2 and the construction drawings and specifications, the greater quantity and the more stringent quality shall prevail.

2.2.5 As the Construction Drawings and Specifications are being prepared, Design-Builder will keep CPR advised of the effects of any CPR-proposed changes on the Schedule and/or the Contract Sum. Design-Builder shall not incorporate any proposed changes into the Drawings and Specifications unless and until it receives direction to do so from CPR.

2.2.6 Design-Builder will assist CPR in securing permits necessary for construction and occupancy of the Work.

2.2.7 Ownership Of Documents. All plans, drawings, tracings, specifications, programs, calculations, reports, electronic data, BIM files, models and other work product (collectively, the "Documents") prepared and/or furnished by Design Builder under this Agreement or for the Project shall be the property of CPR at all times, whether the Project is completed or not, and shall be delivered to CPR on the earlier of (i) Final Completion of the Project, or (ii) the date of termination of this Agreement for any reason prior

to Final Completion of the Project. Design Builder and any applicable Design Professionals shall be deemed to have assigned any intellectual property rights (including copyright) in the Documents to CPR.

- .1 CPR grants a non-exclusive license to Design Builder and the Design Professionals to re-use portions of the Documents which represent less than the full design for a discrete building, provided that such licensee does not disclose any confidential information by such use. To the extent that Design Builder or any Design Professional or Subcontractor uses or reuses the Documents, such party shall defend, indemnify and hold CPR and the Indemnified Parties harmless from (and defend against) any and all liability, costs and expenses (including reasonable legal fees and disbursements), relative to claims arising out of or in connection with such use of the Documents by such other party.
- .2 CPR and its agents, employees, representatives and assigns may use (in whole or in part, or in modified form), reproduce and make derivative works from the Documents for all purposes CPR may deem advisable in connection with the Project, including without limitation the completion, as well as subsequent renovation and remodeling, of the Work, all without further employment of, or payment of any compensation to, Design Builder.
- .3 CPR's use of the Documents without Design-Builder's involvement or on other projects is at CPR's sole risk, and CPR shall defend, indemnify and hold harmless Design-Builder and Design Professionals from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any claim or dispute resolution process, arising out of or resulting from CPR's use of the Design-Build Documents, except to the extent directly caused by a party's negligent error or omission in preparing the document.
- .4 Design-Builder shall obtain from its Design Professionals, Architect, Subcontractors and consultants property rights and rights of use that correspond to the rights given by Design-Builder to CPR in this Agreement.

2.3 Construction Phase

2.3.1 Design-Builder will provide all construction supervision, inspection, labor, materials, tools, and construction equipment necessary for the execution and completion of the Work.

2.3.2 Design-Builder shall establish and implement a program to monitor and inspect the Work in order to ensure that the Work satisfies the requirements of the Contract Documents and the applicable building codes and regulations. No action taken by CPR's Representative or Design Professionals shall relieve Design-Builder from its obligation to perform the Work in strict conformity with the Contract Documents and with all other applicable laws, rules and regulations.

2.3.3 Design-Builder shall develop a staging and storage plan which details the anticipated delivery of equipment and materials and the location of equipment yards and storage facilities. Upon review and approval of the staging and storage plan, Design-Builder shall schedule deliveries and store equipment and materials on-site only in accordance with the approved plan. It is agreed that storage and staging areas, from time to time at the direction of CPR, may be changed, and that Design Builder shall bear all costs for moving materials and equipment so stored, provided CPR's request is reasonably necessary to completion of the Project or operation of the facility.

Materials and equipment delivered and stored at the Site shall be limited to materials and equipment required to be incorporated into the Work, and then only to the extent that Site space restrictions can accommodate such storage. Such materials and equipment, once delivered, shall not be removed from the Site except that any excess materials shall be removed by Design-Builder upon completion of the Work. Design-Builder shall be responsible for proper storage and for any damage, defect, deficiency or theft of any material or equipment stored on the Project.

2.3.4 Periodically CPR's Representative shall schedule and conduct coordination meetings with Design-Builder and other team members. CPR's Representative shall record, transcribe and distribute minutes to all attendees.

2.3.5 Design-Builder will pay all sales, use, gross receipts, and similar taxes related to the Work which have been legally enacted at the time this Agreement is executed.

2.3.6 Design-Builder shall complete the Work in accordance with the Schedule. Design-Builder shall revise the Schedule as required by the conditions of the Work and those conditions and events which are beyond Design-Builder's control, as defined in Section 12.9.

2.3.7 Design-Builder shall, at all times, keep the premises reasonably free from the accumulation of waste materials or rubbish caused by its operations. After completion of the Work, Design-Builder shall remove all of its waste material and rubbish from and around the Work, as well as all tools, construction equipment, machinery, and surplus materials.

2.3.8 Design-Builder will comply with all laws and ordinances legally enacted and in effect which apply to Design-Builder's operations.

2.3.9 Design-Builder warrants to CPR that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, and that all work will be of good quality, free from defects in workmanship and materials, and in conformance with the Contract Documents.

2.3.10 Design-Builder will secure all certificates of inspection, testing, or approval required for CPR's use and occupancy of the Work and deliver them to CPR promptly upon completion of the Work.

2.3.11 Design-Builder will collect all written warranties and equipment manuals and promptly deliver them to CPR upon the Work being completed and prior to final acceptance. Prior to such delivery, Design-Builder shall confirm that each warranty includes, at a minimum, the following information: Project name; Design-Builder's name; description of warranty, including without limitation, duration; name of manufacturer; name of Material Supplier; name and contact information of responsible person/entity in the event of a warranty claim; and instances that might affect the validity of the warranty.

2.3.12 Design-Builder will carry out the checkout of utilities and operations of systems and equipment for readiness, and initial startup and testing.

ARTICLE 3 CPR'S RESPONSIBILITIES

3.1 Information and Services

3.1.1 CPR shall provide Design-Builder with full and timely information regarding the requirements of the Project.

3.1.2 CPR's "approval" of the Schedule, Design-Build Documents, or other materials prepared by Design-Builder in connection with the Project shall be limited to approval of the information for general consistency with CPR's Program for the Project and shall not constitute acceptance or direction of construction means or methods, including but not limited to sequencing, materials, techniques, or other details of the construction, nor shall such review or approval be deemed to transfer any design liability from Design-Builder to CPR. CPR's approval does not change the requirements of the Contract Documents except through written amendments to this Agreement signed by both parties or approved Change Order(s) or Construction Change Directive(s). CPR shall be entitled to rely on the accuracy of the information it receives from Design-Builder.

3.1.3 CPR shall furnish information, described below, to the extent available. Design-Builder shall, after reviewing the information with due care, be entitled to rely upon the accuracy of any such information, except to the extent that Design-Builder knows or Design Professionals, General Contractor and Subcontractors or Sub-subcontractors know or should know of any inaccuracy:

- .1 Reports, surveys, drawings, and tests concerning Site conditions.
- .2 Surveys describing physical characteristics, legal limitations, and utility locations for the Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, existing improvements, adjoining property and structures, and adjacent drainage. All information on the survey shall be referenced to a Project benchmark.
- .3 Report of geotechnical engineers. Such report may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, including

necessary operations for anticipating subsurface conditions, with reports and appropriate professional recommendations.

.4 Such other information as may be identified in the RFP.

3.1.4 If Design-Builder knows of, or suspects, any inaccuracy or inadequacy of the furnished information, it shall notify CPR in writing and propose such further investigation or action as Design-Builder recommends as prudent. If CPR agrees with such further action(s), Design-Builder shall proceed with such action(s) upon receipt of a Change Order for the cost and time extension (if any) related thereto.

3.2 Program Manager's Authority

Program Manager shall have the authority to make decisions on behalf of CPR concerning design and construction, including approving design documents, estimates, schedules, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously so as to avoid unreasonable delay in the services or Work of Design-Builder. Failure to provide same in a timely manner shall be remedied solely by an extension of time in accordance with Article 12. Design-Builder acknowledges that depending on the nature of the decision, Program Manager may need to coordinate with numerous stakeholders before providing direction or decisions. In preparing and updating its schedules, Design-Builder should advise Program Manager concerning upcoming issues or decisions and clarify with Program Manager the amount of time anticipated by the Program Manager to provide the necessary decisions or direction.

When the Contract Documents provide for documents or other information to be communicated to "CPR," Design-Builder shall send the documents or information to Program Manager, or such other individual as CPR may designate from time to time in writing.

ARTICLE 4 COMPENSATION

4.1 Contract Sum

CPR shall pay to Design-Builder, as full compensation for all the work and services on the Project, the Contract Sum consisting of the lump sum amount specified in the preamble, as may be adjusted by Change Order during the Project. The lump-sum price set forth above includes all general and administrative expenses, including both on-site and off-site overhead and direct job expenses, which Design-Builder may experience on the Project calculated through expiration of the Contract Time. Design-Builder will not be entitled to any increase in the Contract Sum for general and administrative expenses unless it is established that there has been a change in the scope of the Work or other events that entitle Design-Builder to a Change Order, and which also entitle Design-Builder to an extension of the Contract Time. The lump-sum price set forth above also includes all expenses incurred by Design-Builder for Architectural, Engineering, and Design services through expiration of the Contract Time.

4.2 CPR Allowances

The amount, if any, paid to the Design-Builder under this line item will be calculated in accordance with Section 14.4, Pricing of Changes.

ARTICLE 5 PROGRESS PAYMENTS

5.1 Schedule of Values

5.1.1 At least fourteen (14) days prior to the first payment application submitted during the Design Phase, Design-Builder shall submit to CPR a schedule of values for Design Phase costs, in sufficient detail and supported by sufficient data to substantiate its accuracy, as CPR may require. This schedule of values will be derived from the Design-Builder's schedule, per Section 2.2.1. When approved, this schedule shall be used as a basis for Design-Builder's applications for payment during the Design Phase.

5.1.2 At least fourteen (14) days prior to the first payment application submitted during the Construction Phase, Design-Builder shall submit to CPR a separate schedule of values for Construction Phase costs in

sufficient detail to evaluate progress at any point in the Work. This schedule of values will be derived from the Design-Builder's schedule, per Section 12.2. The schedule of values shall include both design and construction services for the Construction Phase. This schedule, when approved, shall be used as a basis for Design-Builder's applications for payment during the Construction Phase. Once a month, Design-Builder and CPR will meet to estimate the percentage complete, projected through the end of the month, under each line item. Progress payments will be based upon actual progress of the Work, measured against the agreed-upon schedule of values.

5.2 Payment Application

5.2.1 Design-Builder shall submit applications for payment to Program Manager for review. Prior to submitting a formal application for payment, Design-Builder shall submit to Program Manager a copy of the schedule of values, marked to show the value of the work completed and the payment proposed by Design-Builder for each line item. Within **five (5) calendar days** after receipt of each such "pencil draft" application, Program Manager and Design-Builder shall meet to verify the accuracy of the amounts shown on same, correct the value or values where appropriate, and agree upon the amounts to be paid. Any disagreements at such meeting regarding amounts due and owing shall be resolved pursuant to Article 21. Following such meeting, Design-Builder shall deliver to Program Manager a properly completed, documented application for payment. Payment of undisputed amounts will be due thirty (30) days from CPR's receipt of such payment application together with Program Manager's recommendation to CPR as to payment; if payment applications from Design-Builder are untimely, incomplete or improperly documented, then payment may be delayed until the thirtieth day after Program Manager receives a properly completed, documented application for payment.

5.2.2 Payment applications shall warrant that title to all work, labor, materials, and equipment covered by the payment application is free and clear of all liens, claims and security interests to the best of Design-Builder's knowledge and belief. Only if requested by CPR, Design-Builder shall also submit statutory conditional and unconditional waiver and release forms from Design-Builder, Subcontractors, Sub-subcontractors, Material Suppliers and/or Design Professionals.

5.2.3 The signing of an application for payment will constitute a representation by Design-Builder that, to the best of its knowledge, information, and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents (subject to any specific qualifications stated in the application for payment) and that Design-Builder is entitled to payment in the amount requested.

5.3 Payment for Stored Materials

5.3.1 Materials Stored On-Site. Payments shall be made by CPR, on account of materials or equipment not incorporated in the Work but delivered to the Site and suitably stored by Design-Builder, only with CPR's prior permission when such deliveries are in the best interest of the Project. Payments for materials or equipment stored shall only be made upon submission by Design-Builder of satisfactory evidence that it has acquired title to such material, that it will be utilized on the Work, and that it is satisfactorily stored, protected, and insured, or such other procedures satisfactory to CPR.

5.3.2 Materials Stored Off-Site. Materials stored off-site to be considered for payment shall be, in addition to the above requirements, (i) stored in a bonded warehouse in a manner so as to be separate and identifiable from other stored materials, (ii) insured for the full replacement value of the Materials, and (iii) available and accessible to CPR for inspection. Design-Builder shall cooperate with CPR and, upon CPR's request, shall take such steps, without additional compensation, as CPR deems are reasonably necessary to ensure and protect CPR's interest in, and title to, any such stored Materials.

5.4 Other Payment Terms

5.4.1 Pending Substantial Completion of the Work, CPR shall retain from each approved progress payment application the following amounts: Five percent (5%) of all amounts otherwise payable to Design-Builder.

5.4.2 If CPR fails to pay Design-Builder any undisputed amount at the time payment of that amount becomes due, then Design-Builder may stop the Work until payment of the amount owing has been received, provided Design-Builder must first provided CPR thirty (30) days' (i) written notice that the Work will be stopped, and (ii) opportunity to cure the non-payment. This right will not exist to the extent

payment is withheld (i) because of CPR's bona fide dispute over Design-Builder's right to payment or (ii) otherwise pursuant to this Agreement.

5.4.3 Payments due and unpaid under the Agreement shall bear interest from the date payment is due at ten percent (10%) per annum.

5.5 Withholding Additional Amounts; Grounds

In addition to the amounts which CPR may retain as provided in paragraph 6.4.1, CPR may withhold a sufficient amount from any payment or payments otherwise due to Design-Builder as in CPR's good-faith determination may be necessary to protect CPR in the event of the following:

- .1 Design-Professional, Subcontractor, Sub-subcontractor or Material Supplier claims filed or reasonable evidence indicating probable filing of such claims for which CPR is entitled to indemnity;
- .2 Defective work not remedied;
- .3 Failure of Design-Builder to make proper payments to any of its Subcontractors or Material Suppliers for labor, materials, or equipment;
- .4 The occurrence of reasonable doubt that the Work can be completed for the balance of payments then unpaid to Design-Builder or in the time remaining until expiration of the Contract Time;
- .5 Damage to CPR or a separate contractor for which Design-Builder is potentially liable and for which an insurance company has not accepted responsibility;
- .6 Insufficient documentation, erroneous estimates of value of the Work performed or other incorrect statements in Design-Builder's payment application, but only to the extent of such insufficiency, erroneous estimates or other incorrect statements;
- .7 Failure of Design-Builder to comply with any lawful or proper direction concerning the Work given by any representative of CPR authorized to have given such instruction; or
- .8 Any reason specified elsewhere in the Contract Documents or under California law as grounds for a retention or withhold, or that would legally entitle CPR to a set-off or recoupment, or that would constitute a material breach of this Agreement.

In order to adequately protect CPR, Design-Builder agrees that the amount to be withheld pursuant to this section shall not be more than one hundred fifty percent (150%) of the amount claimed or the value of the work not done or defectively done.

5.6 Disbursement of Withheld Amounts

CPR may apply any withheld amount to payment of third-party claimants. Prior to applying such amounts, CPR shall afford Design-Builder an opportunity to present good cause, if any, why the claim or claims in issue are not valid against Design-Builder. CPR then reserves the right to take such further steps as are appropriate, including, but not limited to, seeking a judicial resolution of the controversy or paying the claim. When and to the extent the reasons for withholding payment are removed, payments will be made for such amounts previously withheld, with no interest owed. Payments wrongfully withheld shall bear interest from the date the payment was originally due to the date paid at the rate set forth in Section 5.4.3.

5.7 Correction of Statement and Withholding of Payment

No inaccuracy or error in any statement provided by Design-Builder shall operate to release Design-Builder from the error, or from damages arising from such work, or from any obligation imposed by the Contract Documents. CPR shall retain the right subsequently to correct any error made in any previously issued claim for progress payment, or progress payment issued, by adjustments to subsequent payments.

5.8 Effect of Progress Payments

Neither the payment, the withholding, nor the retention of all or any portion of any progress payment claimed to be due and owing to Design-Builder shall operate in any way to relieve Design-Builder from its obligations under this Agreement.

ARTICLE 6 PERMITS, LICENSES AND LEGAL REQUIREMENTS

6.1 Basic Standard

Design-Builder shall conduct its operations in conformance with all Legal Requirements for the protection of the public and the workers. Design-Builder shall comply with the requirements of the California Contractors' State License Board and have a valid contractor's license, which is to be maintained in "good standing" throughout the Project. Similarly, design shall be provided only by properly licensed design professionals.

6.2 Permits

6.2.1 Unless otherwise provided in the Contract Documents, CPR shall secure and pay for any building permits and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and prior to commencement of construction, and which are legally required, and Design-Builder shall provide all necessary assistance to CPR in securing same. Design-Builder shall procure all required certificates of inspection, use, occupancy, and other permits and licenses; pay all charges and fees; and give all notices necessary and incidental to the due and lawful operation of its business and prosecution of the Work. Certificates of inspection, use, and occupancy, including permit cards, as applicable, shall be delivered to CPR upon completion of the Work. Design-Builder shall identify in the Schedule when such licenses, permits, fees and inspections shall be necessary.

6.2.2 CPR will reimburse Design-Builder for utility connection fees, encroachment permits, and utility service charges, if any, necessary for the completion of the Work. Design-Builder shall submit proper documentation of fee, permit, and utility service charges to CPR.

6.3 Compliance with Laws and Regulations

The State Required Terms and Conditions attached as **Exhibit B** (to the extent applicable to the Work) are incorporated by reference. Design-Builder shall perform the Work in full compliance with such terms and any other applicable federal, state and local laws and regulations in effect at the time the Work is performed. The Design Professionals shall use due care in identifying and determining the meaning and effect of all applicable building code provisions and other applicable building requirements and restrictions and take such measures as may be necessary to meet such requirements in the design. Among other things, Design-Builder shall: give all legally required notices; obtain all permits and licenses required of Design-Builder for performance of the Work; pay all local, state and federal taxes associated with the Work; and pay all benefits, insurance, taxes and contributions for Social Security and Unemployment which are measured by wages, salaries or other remunerations paid to Design-Builder's employees. Upon CPR's request, Design Builder shall furnish evidence satisfactory to CPR that any or all of the foregoing obligations have been fulfilled.

6.4 Compliance with Labor Code

The Project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. Accordingly, Design-Builder, General Contractor, Subcontractors and Sub-subcontractors shall comply with Chapter 1 of Part 7 of Division 2 of the Labor Code, including without limitation:

- .1 General. In accordance with the provisions of California Labor Code sections 1770, et seq., including but not limited to 1773, 1773.1, 1773.2, 1773.6 and 1773.7, the general prevailing rate of wages in the county in which the Work is to be done has been determined by the Director of the California Department of Industrial Relations. Design-Builder shall comply with the prevailing wage requirements of, and shall be subject to restrictions and penalties in accordance with, Section 1770 et seq., of the California

Labor Code. Interested parties can obtain the current wage information by submitting their requests to the Department of Industrial Relations, Division of Labor Statistics and Research, Post Office Box 420603, San Francisco, CA 94142-0603, or on the web at www.dir.ca.gov. Copies of the general prevailing rate of wages in the county in which the work is to be done are also on file at offices of CPR's Representative and shall be made available on request. Copies of prevailing wages in effect for the contract shall also be posted at the job site and at the Design-Builder's main office.

- .2 Additional Classifications. If it becomes necessary to employ work classifications for which no rate has been determined, Design-Builder shall notify CPR's Representative immediately, who will obtain the additional prevailing rate which shall be applicable from the time of initial employment.
- .3 Payroll Records. Payroll records shall be prepared, certified and maintained by Design-Builder in accordance with California Labor Code Section 1776.
- .4 Travel and Subsistence Payments. Design-Builder shall make travel and subsistence payments to workers needed for performance of work in accordance with Section 1773.8 of the Labor Code.
- .5 Apprentices. Prior to commencement of work, Design-Builder shall contact the Division of Apprenticeship Standards and shall comply with Section 1777.5, 1777.6, and 1777.7 of the Labor Code and Title 8, Sections 200 et seq., of the CCR.
- .6 Hours of Labor. In accordance with California Labor Code Sections 1810, 1811, 1815, eight (8) hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of an officer of this State acting in his official capacity, or under the direction, or control, or by the authority, of any municipal corporation, or any officer thereof.

6.5 Air Pollution Control

Design-Builder shall comply with air pollution control rules, regulations, ordinances, and statutes applicable to performance of work, including those specified in Section 11017 of the Government Code.

6.6 Antitrust Claims

Design-Builder's attention is directed to the following provisions of Public Contract Code 7103.5 and Government Code Sections 4553 and 4554, which shall be applicable to the Design-Builder, its General Contractor, Subcontractors, and Sub-subcontractors:

- .1 "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract the contractor or subcontractor offers and agrees to assign the awarding 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."
- .2 "If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery."
- .3 "Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been

or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

6.7 Protection of Underground Infrastructure

Design-Builder confirms that it is familiar, and will comply, with all applicable laws relating to the protection of underground infrastructure, including without limitation the provisions of California Government Code Section 4216, et seq.

6.8 Underground Service Alert (USA)

The telephone number for Northern California is 800-642-2444 and for Southern California is 800-422-4133.

ARTICLE 7 SUBCONTRACTORS

7.1 Subcontracts

Any subcontracting or material purchases shall be on the express condition that the subcontract or purchase order shall be subject to the terms and conditions of the Contract Documents, and Design-Builder shall incorporate, by appropriate reference, all terms and conditions of the Contract Documents applicable to that scope of work in any such subcontract or purchase order. The form(s) of subcontract and purchase order may be subject to CPR's review and approval. Design-Builder shall not engage subcontractors or material suppliers, or employ any laborers to which CPR has a reasonable objection.

7.2 Termination

Design-Builder shall promptly remove from the Project any person or entity to which CPR objects. Design-Builder shall include provisions in its written subcontracts which permit such termination, as well as termination for convenience, in a manner substantially similar to Section 18.3.

ARTICLE 8 HAZARDOUS MATERIALS

The terms of this Article are in addition to the requirements of Design-Builder's written safety program.

8.1 Material Safety Data Sheets

Before transporting, storing, or using at the Project any Hazardous Materials, Design-Builder shall, upon request, furnish CPR with a copy of the Material Safety Data Sheet for such material or substance.

8.2 Definition

The term "Hazardous Materials" as used herein shall mean any flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including, without limitation, asbestos, asbestos-containing materials, petroleum or any fractions thereof, petroleum-related products or any fractions thereof, polychlorinated biphenyl ("PCB") or PCB-containing materials, and any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state, or local Legal Requirement, now in effect or enacted prior to Substantial Completion of the Project.

8.3 Notice of Hazardous Materials

Design-Builder shall immediately notify CPR in writing if Design-Builder becomes aware of the presence of any Hazardous Materials in, on, under, or about the Site or of any occurrence or condition on any real property adjoining or in the vicinity of the Site which could cause the Project or any portion of it to be classified as "border-zone property" under the provisions of California Health and Safety Code sections 25220, et seq., or any regulation adopted in accordance therewith.

8.4 Indemnification

In the event Hazardous Materials or contamination therefrom are brought onto the Site or adjacent property and are discharged or released by Design-Builder, General Contractor any Subcontractor, Sub-subcontractor, Material Supplier, or any person or entity under the direct or indirect control of any of them, and notwithstanding any other term or provision of this Agreement, Design-Builder agrees to defend, indemnify, and hold Indemnified Parties harmless from and against any and all claims, liability, fines, penalties, response costs, clean-up costs, damages, or judgments associated with the presence, discharge, release, or escape of such materials or contamination. Upon the request of CPR, Design-Builder shall take such steps, without additional compensation, as are reasonably necessary to remove the Hazardous Materials or contamination. Design-Builder shall not be responsible for preexisting Hazardous Materials, and the foregoing indemnity obligation shall not apply thereto, unless Design-Builder causes those materials to be discharged or fails to respond promptly and appropriately to the discovery or discharge of such materials.

8.5 Existing Hazardous Material

In the event Hazardous Materials or contamination therefrom, other than those identified in the Contract Documents, are found to exist at the Site, and notwithstanding any other term or provision of the Contract Documents, CPR agrees to indemnify, hold harmless, and defend Design-Builder from and against any and all claims, liability, fines, penalties, response costs, damages, or judgments, associated with the presence, discharge, release or escape of such materials of contamination; provided, however, that the provisions of this sentence shall be inapplicable to any Hazardous Materials or contamination brought onto the Site by Design-Builder, General Contractor, or any Subcontractor, Sub-subcontractor, Material Supplier, or any person or entity under the direct or indirect control of any of them, or as to which Design-Builder fails to give notice in accordance with the first paragraph of this section, to the extent that the failure to give such notice materially affects CPR's interest.

ARTICLE 9 SUPERVISION AND LABOR

9.1 Quality Review

Design-Builder shall establish and implement a program to monitor and inspect the Work in order to ensure that the Work satisfies the requirements of the Contract Documents. Design-Builder shall also cooperate and coordinate with any independent inspector engaged by CPR.

9.2 Supervision Procedures

Design-Builder shall supervise and direct the Work using its best skill and attention. Design-Builder shall be solely responsible for all construction means, methods, techniques, and procedures and for coordinating all portions of the Work. Design-Builder shall be responsible to CPR for the acts and omissions of its employees, Subcontractors, Sub-subcontractors, Material Suppliers, and their agents and employees, and other persons performing any of the Work.

9.3 Skilled Labor

All labor shall be performed by individuals skilled for the kind of work required and shall be conducted under the direction of a competent first-line supervisor.

9.4 Dismissal of Unsatisfactory Employees

Design-Builder shall, at all times, enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the assigned task. Design-Builder shall remove, or cause a Subcontractor to remove, from the Project any incompetent employee or any employee not skilled for the type of work required. CPR may, in writing, require Design-Builder to remove from the Work any employee for cause.

9.5 Personal Attention and Superintendence; Design-Builder's Agent

Design-Builder shall supervise the Work to the end that it shall be faithfully prosecuted in conformance with the Contract Documents. Design-Builder shall, at all times while the Work is in progress, keep a

project manager and full-time superintendent on the Project Site. Design-Builder shall advise CPR in writing of its superintendent and project manager, and shall further designate in writing which of these individuals shall be fully empowered to act as agent for Design-Builder. Design-Builder shall be responsible for the faithful performance of all instructions delivered by CPR to Design-Builder's authorized agent(s).

9.6 Inspection of the Work of Other Contractors

It shall be the duty of Design-Builder, General Contractor, Subcontractors and Sub-subcontractors, before beginning any work, to examine all existing construction and the work of other contractors that may affect their work and to satisfy themselves that everything is in proper condition to receive such work. Design-Builder shall notify CPR in writing of any discrepancies or conditions that it discovers or are reasonably apparent which deviate from the Contract Documents or are otherwise unacceptable.

9.7 Design-Builder's Coordination of Work

CPR reserves the right to do other work in connection with the Project, by contract or otherwise. Design-Builder shall, at all times, conduct its work so as to impose no hardship on CPR or others engaged in work on the Project. Design-Builder, where practicable, shall adjust, correct, and coordinate its work with the work of others so that no interference, delay, or disruption shall result in the Project.

9.8 Daily Reports

Design-Builder shall prepare and maintain daily construction reports. The daily reports shall, at a minimum, address: construction activities and locations, construction crew sizes, start or completion of activities, progress on construction activities (including units or portions of work completed), tests or inspections performed, deliveries of material or equipment, delays or potential delays, visitors to the Site, weather conditions and impact on the Project (if any), construction equipment used, and personal injuries or damage to property.

9.9 Record Drawings

9.9.1 Design-Builder shall prepare and maintain on a current basis an accurate and complete set of:

- (a) Record Drawings showing clearly all changes, revisions and substitutions during construction, including without limitation field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, pipes, structural members, walls, partitions and other significant features; and
- (b) Annotated Specifications showing clearly all changes, revisions and substitutions during construction. In the event a specification allows Design-Builder, Subcontractor, Sub-subcontractor or Material Supplier to elect one of several brands, makes or types of material or equipment, the annotations shall show which of the allowable items was furnished.

These Record Drawings and Annotated Specifications shall be kept at the Project Site, and Design-Builder shall update them as often as necessary to keep them current, but no less often than every two (2) weeks. The Record Drawings and Annotated Specifications shall be available for inspection by CPR and any governmental or quasi-governmental authority with jurisdiction over the Work.

At the time of its final Application for Payment under Article 17, Design-Builder shall provide one (1) complete set of Record Drawings and Annotated Specifications to CPR, certifying them to be a complete and accurate reflection in all material respects of the actual construction conditions of the Work.

Design-Builder shall provide the Record Drawings and Annotated Specifications in an electronic format specified by CPR.

9.9.2 Design-Builder shall also maintain one (1) record copy of Change Orders and Construction Change Directives, and approved Shop Drawings, Product Data, Samples and similar required submittals ("Submittals"). Such items shall be maintained at Design-Builder's office, as set forth in this Agreement; provided that, duplicates of Change Orders, Construction Change Directives (to the extent required for efficient performance of the Work) and Submittals shall be maintained at the Project Site. These items

shall be available for inspection by CPR and any governmental or quasi-governmental authority with jurisdiction over the Work. Design-Builder shall provide to CPR a complete set of Submittals, in good condition and certifying them to be complete and accurate in all material respects, at the time of Design-Builder's final Application for Payment.

9.10 Submittals

Contractor shall furnish submittals as specified in the Contract Documents or directed by Program Manager. Submittals shall be in a form acceptable to Program Manager and may include, but not be limited to, cost breakdowns, contract schedules, shop drawings, trench excavating plans, product data and samples, purchase orders, operating and maintenance data, as-built documents, and submittals specified in other sections of the Specifications.

Submittals shall be subject to review by Program Manager for conformity with the Drawings and Specifications, provided however that neither the approval, review or lack of review of any Submittal shall waive any of the requirements of the Contract Documents, nor relieve Design Builder of any obligation hereunder.

Submittals shall be in English and numerical data shall be in the system of units used as shown and specified in the Drawings and Specifications.

ARTICLE 10 INSPECTION AND TESTING

10.1 Inspection

Third party inspections shall be provided as required in the Contract Documents, at CPR's expense. Notwithstanding the foregoing inspections, Design-Builder is responsible to develop and implement its own quality control/quality assurance program to ensure that the Work is being performed in accordance with the Drawings, Specifications, applicable laws, codes, and other relevant requirements.

10.2 Stop Work Notices

CPR shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Contract Documents or any orders issued to Design-Builder. Design-Builder shall comply with the instructions of CPR regarding corrections needed to cure the defect. The suspended work shall be resumed only when such instructions are fulfilled. Design-Builder shall not be entitled to an extension of time in the event of such suspension of work.

10.3 Effect of Inspections

Neither the final inspection and payment, nor any interim inspection or progress payment, shall relieve Design-Builder of its obligation to fulfill the Contract or perform the Work as required by the Contract Documents. Any work, materials, or equipment not meeting the requirements and intent of the Contract Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefor may have been made.

10.4 Inspection of Completed Work

Should CPR determine that it is necessary or advisable to make an inspection of work already completed, at any time before final inspection and acceptance of the Work, by removing or exposing any work, Design-Builder shall, upon instruction of CPR, promptly furnish all necessary facilities, labor, and materials to do so. If such work is found to be defective in any respect, Design-Builder shall bear all expenses of such inspection and examination. If, however, such work is found to meet the requirements of the Contract Documents, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed Design-Builder and a Change Order shall be issued.

10.5 Notice to CPR of Inspection

When the Contract Documents, instructions by CPR, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested, or approved before the Work proceeds, such work shall not proceed, nor shall it be covered without inspection. All work shall be available for inspection, and CPR shall have full access to review all work during all working times. Design-Builder shall provide all necessary means of access (e.g., ladders) for inspections.

10.6 Testing

The CPR shall engage an independent testing laboratory to conduct testing as deemed necessary by the CPR and CPR's inspectors. The services of this testing laboratory are not intended for the benefit of the Design-Builder to implement their quality control/quality assurance program, but Design-Builder shall be entitled to rely on information provided by CPR and CPR's inspectors.

At CPR's request, Design-Builder shall provide samples on any materials, articles, equipment, installations, or construction performed by Design-Builder, consistent with generally acceptable industry standards, at no additional cost to the CPR.

Design-Builder shall notify CPR of the need for off-site tests or inspections. Design-Builder will arrange such tests or inspections, but CPR shall bear the costs for the same.

10.7 Selection of Samples

All samples and specimens for testing shall be selected by CPR, inspector, or the testing laboratory.

10.8 Damage Due to Testing

Design-Builder shall, without increase in the Contract Sum, repair all damage resulting from testing specified in the Contract Documents. CPR shall issue a Change Order for repair of damage due to sampling or testing other than that specified in the Contract Documents.

ARTICLE 11 PROTECTION OF WORKERS, PUBLIC, AND PROPERTY

11.1 Safety Precautions and Programs

Design-Builder shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CPR has no responsibility, either directly or indirectly, for the means, methods, techniques, sequences, or procedures utilized by Design-Builder or for safety precautions and programs used in connection with the Work. Design-Builder shall prepare a written safety program for the Project Site and designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents.

11.2 Protection of Persons and Property

Design-Builder shall, at all times until final acceptance, maintain reasonable protection against injury to persons, including employees, or damage to property on or near the Project or adjacent to the Site. Design-Builder shall attempt to provide a safe environment for all functions to be performed. The use of alcohol or drugs will not be permitted. Design-Builder shall comply with all occupational safety laws, rules, and regulations applicable to the Work. Design-Builder shall be solely responsible for the safety of the worksite and shall comply with accident prevention and safety ordinances, rules, and laws applicable to performance of work. During the performance of work, Design-Builder shall exercise precautions for the protection of persons and property, including timely installation of adequate guards and protective devices for equipment and machinery, whether used to perform work or incorporated into the Project.

11.3 Protection and Repair of Work

Design-Builder shall maintain reasonable protection of the structures, facilities, equipment, tools, materials, and any other property on or adjacent to the Site against damage, loss, or theft. Design-Builder shall, until Final Completion, maintain reasonable protection of all of its work and work

performed by others under this Agreement from damage, loss, defacement, or vandalism. Design-Builder shall provide protection of completed work which may be subject to damage as a result of Design-Builder's unexcused failure to perform as scheduled. Design-Builder shall repair or replace any such damage and remove any damaged or defaced material or equipment from the Site at its own cost.

In the event of the Work herein being wholly or partially damaged or destroyed by war, fire, storm, lightning, flood, earthquake, tidal wave, mob violence, vandalism or other casualty not the fault of Design-Builder, before the Final Completion of the Work, Design-Builder, upon written instruction from CPR, shall proceed to replace and/or repair the Work in accordance with the plans. In this event, the provisions of this Agreement shall remain in full force and effect, except that the contract sum shall be increased by the total cost of removing and/or replacing all damaged and/or destroyed work and the time for completion shall be extended.

11.4 Protection of Workers

Design-Builder shall take reasonable precautions for the safety of all employees and others on the Site and comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Site. Design-Builder shall erect and properly maintain, at all times, as required by the conditions and progress of the Work, reasonable safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by construction.

11.5 Working Limits and Regulations

Design-Builder shall not unreasonably encumber the Site or adjacent areas with its materials or equipment. Design-Builder shall enforce any instructions from CPR concerning placement of signs regarding advertising, fires, danger signals, barricades, radios, noise, and smoking.

11.6 Protection of Existing Improvements

Design-Builder shall clean the portions of existing improvements and facilities which are used, traversed, or dirtied by the workers on the Work. All existing improvements and facilities shall be protected from any damage resulting from Design-Builder's operations, equipment, or workers during the course of the construction. All damaged improvements and facilities shall be replaced, repaired, and restored to their original condition without additional cost to CPR.

11.7 Emergency Safety Actions

In an emergency affecting the safety of life or property, including adjoining property, Design-Builder, without previous instructions or authorizations from CPR, is authorized to and shall act at Design-Builder's discretion to prevent such threatened loss or injury. Design-Builder shall immediately notify CPR of such actions and thereafter shall comply with any instructions issued by CPR.

ARTICLE 12 CONTRACT TIME/SCHEDULE

12.1 Preliminary Construction Schedule

During the Design Phase, Design-Builder will prepare and periodically update a Preliminary Construction Schedule, which shows the major work activities included in the Work, the estimated duration for performing each activity, and the interrelationship and dependence of those activities. The Preliminary Construction Schedule shall be in sufficient detail to permit a realistic evaluation of the time needed for completion of the Work and the effect of changes or revisions in the Project design on timely completion of the Work or the Project.

12.2 Final Schedule

Prior to commencing construction and within sixty (60) days from the date of execution of the Agreement, Design-Builder shall submit a detailed Schedule showing the date each activity is expected to start and complete. Schedule activities shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and provide an appropriate basis for monitoring progress of the Work. The schedule shall show the sequence, duration, and interdependence of activities required for the

complete performance of all work. The schedule shall be developed using the critical path method of scheduling. The schedule shall be cost-loaded and will, together with the Schedule of Values, become the basis for progress payments as outlined in Article 5. The schedule shall begin with the issuance of the notice to proceed, part 1, and conclude with Final Completion.

12.3 Float

Float, slack time, or contingency within the schedule shall be shown as such, and the total float within the schedule is not for the exclusive use of either party, but is a jointly owned, expiring resource, which is available to and shared by the parties.

12.4 Schedule Updates

Design-Builder shall submit updated schedules at intervals agreed to between CPR and Design-Builder during construction. For those activities started but not yet completed at the time of the submittal, the updated schedule shall reflect the percentage complete and an estimate of the remaining duration.

12.5 Time of Essence

Time is of the essence of this Agreement. Design-Builder shall, to the fullest extent possible, carry on the various classes or parts of the Work concurrently and shall not defer construction of any portion of the Work in favor of any other portion of the Work, without the express approval of CPR.

12.6 Date of Completion; Liquidated Damages

12.6.1 Design-Builder obligates itself to achieve Substantial and Final Completion of the Work within the Contract Time, as extended pursuant to Section 12.9 below.

12.6.2 CPR and Design-Builder acknowledge and agree that if Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, CPR may suffer, as a result of such failure, substantial damages which are both extremely difficult and impracticable to ascertain. Therefore, having reasonably endeavored to ascertain an amount bearing a reasonable relationship to the actual damage that CPR may incur if Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, the parties agree that, in the event Design-Builder shall fail to achieve Substantial Completion within the Contract Time, Design-Builder agrees to pay the CPR as liquidated damages, and not as a penalty but as a reasonable estimate of the amount of damages CPR may suffer, per day for each calendar day occurring after the Contract Time during which Substantial Completion is not achieved, the amount specified in the preamble. Notwithstanding anything in this Agreement to the contrary, CPR and Design-Builder acknowledge and agree that this liquidated damages provision shall only apply to damages caused by Design-Builder's failure to achieve Substantial Completion within the Contract Time, and that CPR is entitled to any and all legal and equitable remedies CPR may have where CPR's damages are caused by any reason other than Design-Builder's failure to achieve Substantial Completion within the Contract Time.

12.7 Responsibility for Completion

Design-Builder shall furnish such manpower, materials, facilities, and equipment and shall work such hours, including overtime operations, weekends, and holidays, as may be necessary to ensure the prosecution and completion of the Work in accordance with the approved and currently updated Schedule. If work on the critical path is fourteen (14) days or more behind the currently updated and approved Schedule (including extensions of time where such are warranted) and it becomes apparent from the current Schedule that the Work will not be completed within the Contract Time, Design-Builder shall implement whatever steps it deems necessary to recover all lost time for which a time extension is not granted.

12.8 Commencement of Warranties

Warranties called for by the Contract Documents (including without limitation Article 17) shall commence on the date of Substantial Completion of the Work or designated portion thereof.

12.9 Delays in the Work

12.9.1 If Design-Builder is delayed at any time in the progress of the critical path of the Work by an Excusable Delay, then the Contract Time shall be extended by Change Order for the period caused by such delay. If the delay is caused exclusively by a Compensable Delay, as defined in Section 1.6, Design-Builder shall be entitled to a Change Order for Design-Builder's reasonable and documented additional costs resulting from such Compensable Delay. Design-Builder shall strive to mitigate any and all delays to the progress of the Work.

12.9.2 If Design-Builder contemplates making a claim for an extension of the Contract Time, Design-Builder shall give written notice of such claim to CPR. The notice shall include an estimate of probable effect of the delay on progress of the Work, justification of why the delay is an Excusable or Compensable Delay under this Agreement, and sufficient extraction and analysis of the Schedule as may be required to verify the claimed effect on the completion date. Such notice of claim must be initiated within fourteen (14) days after occurrence of the event giving rise to such claim or within seven (7) days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Design-Builder's failure to deliver the notice of claim with its required documentation within the applicable time frame shall be deemed a waiver of the claim by Design-Builder.

12.9.3 Whenever it becomes apparent that Substantial Completion or Final Completion may extend beyond the Contract Time, as adjusted pursuant to this Agreement, Design-Builder shall re-plan the Work in order to achieve Substantial Completion and Final Completion within the Contract Time. Design-Builder shall prepare and submit the proposed revised Work plan, including updated schedules describing how Design-Builder intends to recover so as to complete the Work within the Contract Time, within the response time requested by CPR, which shall be at least seven (7) calendar days.

12.9.4 If the Excusable Delay is due to adverse weather, or the impact of weather on conditions of the Site, then the Contract Time shall be extended on a day-for-day basis only for those adverse weather delays which meet the following test:

- .1 The Work at the Site which was delayed must have involved an activity on the critical path of the most recently approved Schedule; and
 - (a) The adverse weather must have prevented at least twenty-five percent (25%) of the normal labor and equipment force for the critical path activity from proceeding with its work in a reasonable manner; or
 - (b) The adverse weather must have prevented the normal labor and equipment force for the critical path activity from working at least five (5) hours of a normal eight (8)-hour day; and
- .2 The adverse weather is documented on the Design-Builder's daily construction reports; and
- .3 The adverse weather is shown to have been abnormal for the particular period of time and could not reasonably have been anticipated by Design-Builder.

12.9.5 Upon request, Design-Builder shall provide a "Time Impact Analysis" for any delay to the critical path of the Work. The Time Impact Analysis shall be in form and content acceptable to CPR and Program Manager, and may include: (a) fragmentary Critical Path Method (CPM) type network (Fragnet) illustrating how Contractor proposes to incorporate the alleged delay into the current updated Schedule; (b) direct and indirect costs which may have resulted from the delay; and (c) identification of the preceding and succeeding activities in the current updated Schedule to which the Fragnet is to be connected.

ARTICLE 13 INSURANCE, INDEMNITY AND PERFORMANCE SECURITY

13.1 Indemnification

Design Builder shall, with respect to all Work which is covered by or incidental to this Agreement, indemnify, defend, and hold the Indemnified Parties harmless from and against any and claims, liability,

loss, damage, costs or expenses, including reasonable attorneys' fees, expert witness fees, awards, fines or judgments, arising out of or resulting from (a) mechanic's liens, stop notices, bond claims, or similar claims for payment from Subcontractors, Sub-subcontractors, Material Suppliers or any other firm or person arising out of or relating to the Work, or claiming through Design-Builder, or (b) death or injury to persons (including Design-Builder's employees) or property (including loss of use), or (c) design defects, or other loss, damage, claim or expense, to the extent caused by, contributed to or arising from actual or alleged breach of this Agreement, negligent errors or omissions in performance of this Agreement, or willful misconduct (whether performed by Design-Builder, Design Professionals, a Subcontractor, a Sub-subcontractor or any of their respective agents or consultants), provided however that Design-Builder shall not be obligated under this Agreement to indemnify any entity to the extent that the damage is caused by the active or sole negligence or willful misconduct of CPR or its agents or contractors other than Design-Builder. The "Indemnified Parties" are as defined in Section 1.6.18.

Moreover, Design Builder shall indemnify and hold the Indemnified Parties harmless against any claim, suit or action, or any alleged violation or infringement of patent rights, trademarks, copyrights or any other intellectual property right, which may be made against an Indemnified Party by reason of the use of any Design-Build Document which is now or may hereafter be covered by patent, copyright or trademark, and also against all expense, including attorneys' fees and expert witness' fees, which an Indemnified Party may incur in defending or adjusting any such claim, suit or action.

13.2 Insurance

Design-Builder shall procure and maintain, at its sole cost and expense, all insurance required by this Agreement, including without limitation **Exhibit C**, attached hereto and incorporated herein.

13.3 Adjustment of Loss

Any insured loss is to be adjusted by CPR and the insurance carrier, subject to Design-Builder's review and consent. Design-Builder shall pay each Subcontractor an equitable share of any insurance monies received by Design-Builder and, by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

13.4 Waiver

Design-Builder waives, and shall require all its Subcontractors to waive, all rights of recovery against CPR (and such other persons or entities as required by the Contract Documents) for losses within the scope of Subcontractor's or Sub-subcontractor's insurance.

13.5 No Limitation

13.5.1 The coverage of any insurance policy required hereunder or actually carried by CPR shall not limit the extent of Design-Builder's liability under this Contract. In the event CPR employs any separate contractor to work on the Site prior to Design-Builder's Final Completion, CPR shall endeavor to require the separate contractor to cause Design-Builder to be named an additional insured under its commercial general liability policy.

13.5.2 Nothing contained in these insurance provisions shall limit the indemnity obligations of Design-Builder under Section 13.1 or applicable law.

13.6 Performance Security

Design-Builder shall provide CPR with assurances that Design-Builder and its team shall meet the performance and payment obligations under the Contract Documents, as more particularly set forth in the RFP.

ARTICLE 14 CHANGES IN THE WORK

14.1 Change Orders

CPR may require changes in, additions to, or deletions from the Work to be performed or the materials to be furnished pursuant to the Contract Documents. Changes may be made pursuant to a written Change Order, which shall state the agreement of CPR and Design-Builder upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment in the Contract Sum, if any; and
- .3 The extent of the adjustment in the Contract Time, if any.

14.2 Change Orders Regarding Time for Completion

Any time extension authorized by CPR pursuant to Article 12 shall be set forth in a Change Order signed by CPR and Design-Builder.

14.3 Construction Change Directive

Changes also may be made pursuant to a Construction Change Directive signed by CPR, which shall direct a change in the Work and state a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order or when time does not permit processing of a Change Order prior to implementation of the change.

14.4 Pricing of Changes

If a Change Order or a Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum adjustment to the Contract Sum, properly itemized and supported by sufficient substantiating data to permit evaluation. In the absence of mutual acceptance, CPR may issue a Construction Change Directive based on CPR's estimate.
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost of the Work based on daily approved time and material work sheets plus Design-Builder's mark up on such costs for overhead and profit, which shall not exceed the percentage(s) specified in the preamble to this Agreement.

14.5 Basis of calculation for changes

Adjustment in compensation for changes shall be based upon:

- .1 Labor. Compensation for labor shall include the necessary payroll cost for labor, including the first level supervisor directly engaged in performance of the changes. Wages shall not exceed current prevailing wages in the locality for performance of the changes. Use of a classification which would increase labor cost will not be permitted. Exceptions to the above will be permitted only where Design-Builder establishes the necessity for payment at higher rates or classifications to the satisfaction of the CPR.
- .2 Materials and Equipment. Cost of materials and equipment may include costs of transportation and delivery. If discounts by suppliers are available to Design-Builder, they shall be credited to CPR. CPR reserves the right to furnish materials and equipment required for performance of the changes and Design-Builder shall have no claim for costs or mark-ups on such materials and equipment.

- .3 Construction Equipment. Any use for less than 30 minutes shall be considered one-half hour. No costs will be allowed for time while construction equipment is inoperative, idle, or on standby, without CPR's prior approval. No allowance will be made for individual pieces of construction equipment and tools having a replacement value of \$500 or less. Rental charges for all necessary temporary facilities, machinery, and equipment, exclusive of hand tools, which are provided by Design-Builder at the site, including costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof, whether rented from Design-Builder or others, shall be consistent with those prevailing in the locality. Rates and quantities of equipment rented shall be subject to CPR's prior approval. Unless otherwise agreed by CPR, Design-Builder shall provide at least two (2) bona fide price quotations from reputable equipment suppliers to validate the reasonableness of the proposed rental rates.
- .4 A markup for Design-Builder's overhead and Profit, which shall not exceed the percentage(s) specified in the preamble.

14.6 Response to a Construction Change Directive

Upon receipt of a Construction Change Directive, Design-Builder shall promptly proceed with the change in the Work involved and advise CPR within fourteen (14) days of Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

A Construction Change Directive that is not responded to within fourteen (14) days, or is signed by Design-Builder, indicates Design-Builder's agreement therewith, including adjustment in the contract sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

If the net value of a change results in a credit from Design-Builder, the credit shall be the actual net cost. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

14.7 Time and Material Costs Recordkeeping

In the event that the pricing method selected is the "Cost of the Work plus" method described in paragraph 14.4.3, Design-Builder shall keep, in such form as CPR may prescribe, an itemized accounting of the labor, materials, and equipment used during each day, together with appropriate supporting data, to be submitted to Program Manager on a daily basis.

14.8 Unforeseen Site Conditions

14.8.1 If subsurface or latent physical conditions are encountered at the Site during progress of the Work which differ materially from those indicated in the Contract Documents, or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the Site, Design-Builder shall promptly notify CPR, in writing, of the differing conditions before they are disturbed and before the affected Work is performed. Upon written notification, CPR will investigate the conditions, and if CPR determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under this Agreement, an adjustment will be made and the Agreement modified in accordance with this Article.

14.8.2 Conditions will not be qualified as latent or unknown if they were (1) readily visible or reasonably accessible to an ordinary design-builder performing the site investigations required of Design-Builder under the Contract Documents; (2) disclosed in information or materials provided by CPR or CPR's consultants as described in Article 3 or included as part of the Contract Documents; or (3) reasonably inferable by an experienced construction professional from information discussed in (1) or (2) above.

14.8.3 In addition to the information required for other claims under this Agreement, a claim for adjustment of the Agreement due to differing Site conditions must include the following information:

- .1 A detailed description of the unknown or latent condition;

- .2 How the condition differs materially from those indicated or anticipated in the Contract Documents or is of an unusual nature;
- .3 A description of why the condition is not excluded under the provisions of Section 14.8.2; and
- .4 An estimate of any change in the scope of the Work required as a result of the condition, which estimate shall be based upon exploratory excavation, system trace out or other means immediately available.

14.9 Exclusions from Change Orders

Design-Builder shall not be entitled to a Change Order or additional compensation by reason of any matters resulting from or attributable to (a) the inclusion or exclusion of any item which should be included or excluded in accordance with good construction practice, whether or not shown or set forth in a Construction Document; (b) mistake, error, omission, or negligence of Design-Builder, Design Professionals, General Contractor, Subcontractors, Sub-subcontractors or Material Suppliers; or (c) Inexcusable Delay.

14.10 Changes in Law

Design-Builder shall comply with all applicable Legal Requirements in effect at the time the Work is constructed. In the event any changes in applicable Legal Requirements affecting the performance of the Work are enacted after the effective date of this Agreement, Design-Builder shall be entitled to a Change Order to the extent such changes affect the Contract Sum or the Contract Time.

ARTICLE 15 SUBSTANTIAL COMPLETION, INSPECTION, AND OCCUPANCY

15.1 Notice of Substantial Completion Inspection

When Design-Builder believes that the Work has reached Substantial Completion, Design-Builder shall submit to CPR a written request for a Substantial Completion Inspection. Within five (5) days after receipt of Design-Builder's written request, Program Manager shall conduct the Substantial Completion Inspection, which shall also be attended by Design-Builder's superintendent and project manager, and such other individuals as Program Manager or Design-Builder deem appropriate. If Program Manager has determined that Design-Builder has achieved Substantial Completion, Design-Builder shall be so notified and CPR shall sign a "Certificate of Substantial Completion." If not, Program Manager shall identify the items which must be completed prior to Substantial Completion ("initial punch list"). Once Design-Builder has completed those items, the process for Substantial Completion Inspection shall be repeated.

15.2 Final Punch List

If the Project is Substantially Complete, Program Manager shall issue a "final punch list" of items which describes items of incomplete work that must be completed prior to CPR's final acceptance of the Project. CPR or Program Manager may add items to the final punch list that are discovered to be incomplete after the Substantial Completion Inspection.

After Design-Builder has completed all items properly listed on the final punch list and believes that it has achieved Final Completion, it shall submit its application for final payment and request final inspection. Program Manager shall, within five (5) days, conduct a Final Completion Inspection, which shall also be attended by Design-Builder's superintendent and project manager, and such other individuals as the parties deem appropriate. Design-Builder shall, prior to or along with its application for final payment, submit to CPR's Representative all applicable warranties, guaranties, maintenance and operations manuals, and the final Record Drawings showing the location and configuration of electrical, mechanical, plumbing, and HVAC systems. Once Program Manager determines that the Project has been finally completed in accordance with the Contract Documents, CPR shall cause to be signed and recorded a notice of completion. If corrective items are noted after the final punch list is published, they shall be considered warranty items and will be corrected promptly; they shall not, however, impact the determination of Final Completion.

15.3 Use of Work Prior to Acceptance

Whenever, in the opinion of CPR, the Work, or any part thereof, is in a condition suitable for use, and the best interests of CPR require such use, CPR may take possession of, connect to, or use that portion of the Work. If unscheduled early possession or use increases the cost of or time needed to complete the Work, or a part thereof, an appropriate Change Order shall be issued, provided, however, that no Change Order shall be issued if such early possession or use is due to Design-Builder's failure to timely perform its obligations hereunder.

15.4 Effect of Occupancy

CPR's occupancy, as contemplated in this Article, shall not constitute acceptance by CPR of the Work, or any part thereof. Such use shall neither relieve Design-Builder of any of its responsibilities under the Contract Documents nor act as a waiver by CPR of any of the terms or conditions of the Contract Documents, except that warranties shall commence upon occupancy and Design-Builder shall not bear the risk of loss or damage to that portion of the Work occupied by CPR.

15.5 Coordination with Other Activities

If any portion of the Work is occupied by CPR before Final Completion, Design-Builder shall, to the greatest extent practicable, conduct its operations so as not to interfere unreasonably with CPR's use of the occupied portions.

ARTICLE 16 CONTRACT CLOSE-OUT

16.1 Design-Builder's Request for Final Payment

Design-Builder shall submit its application for final payment as set forth in Section 15.2. The application for final payment shall include an accounting of the Cost of the Work for all Work performed on a Time and Materials cost basis and/or on an allowance basis. Design-Builder shall include, only if requested by CPR, statutory forms of Conditional Lien Waiver and Release upon Final Payment from Design-Builder, each Design Professional, and those individuals and firms having mechanic's lien or stop notice rights against the Work and having served preliminary 20-day notices.

16.2 Additional Submissions

Prior to or simultaneously with Design-Builder's application for final payment, Design-Builder shall submit the following items to CPR:

- .1 The final Record Drawings as required by the Contract Documents showing, among other things, the location and configuration of electrical, mechanical, plumbing, and HVAC systems.
- .2 Three (3) sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation, elevators, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors, or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.
- .3 All applicable warranties, guaranties, maintenance and operations manuals.
- .4 Such other documents from Design-Builder as may be required by the agencies having jurisdiction in order to accept the Work as complete and/or certify the Project for occupancy or operation.

16.3 Withholding From Final Payment

CPR may withhold amounts from final payment for any of the reasons specified in Section 5.5 or any other provision of the Contract Documents or applicable law.

16.4 Waiver at Final Payment

In accepting final payment Design-Builder waives all claims against CPR except for:

- .1 claims identified as outstanding at the time of final payment; and
- .2 claims under indemnities provided hereunder arising out of future events after Final Completion.

16.5 Accounting Records

16.5.1 Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to CPR. CPR and CPR's accountants or consultants shall be afforded prompt access to Design-Builder's Project record keeping and accounting personnel of Design-Builder. Subject to Section 16.5.2 below, CPR may inspect and copy, from time to time and at reasonable times and places, any and all information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), including, without limitation, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other information and matters that may, in CPR's judgment, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by any Contract Document that are in Design-Builder's custody or under Design-Builder's control. Design-Builder shall preserve these Project records for a period of four (4) years after final payment, or for such longer period as may be required by law or appropriate under the circumstances.

16.5.2 This paragraph only applies to the extent that Work is performed on a Cost of the Work reimbursement basis. Design-Builder shall allow CPR or its authorized representative(s) to inspect, audit, or reproduce any records to the extent necessary for CPR to evaluate and verify the Cost of the Work, including direct and indirect costs such as overhead allocations. Design-Builder will make this material available promptly upon CPR's request. Such records shall include but not be limited to accounting records, job cost reports, job cost history, margin analysis, written policies and procedures, subcontract files (contracts, correspondence, change order files, including documentation covering negotiated settlements), backcharge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other documents customarily maintained by contractors performing work on a cost plus a fee basis or that CPR otherwise deems necessary to substantiate charges related to this Agreement.

16.5.3 Design-Builder shall require that all payees (including General Contractor, Subcontractors, Sub-subcontractors, Design Professionals and Material Suppliers) comply with the provisions of this Article by incorporating these requirements in all written contracts. Such requirements to include flow down right-to-audit provisions in contracts with payees shall also apply to all lower-tier subcontractors and subconsultants.

ARTICLE 17 WARRANTY

17.1 Warranty of Work and Materials

Design-Builder warrants to CPR that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Design-Builder's warranty excludes remedy for damage or defect caused by abuse (other than by Design-Builder or those for whom it is responsible), modifications not executed by Design-Builder, improper or insufficient maintenance after Final Completion, improper operation, or normal wear and tear under normal usage

after Final Completion. If required by CPR, Design-Builder shall promptly furnish satisfactory evidence as to the kind and quality of materials and equipment.

Upon receipt of written notice from CPR, Design-Builder shall promptly repair and make good in accordance with the Contract Documents any defect in workmanship and materials that may appear in the Work within one (1) year after Substantial Completion of the Project, or designated portion thereof (as determined in accordance with the Contract Documents), or within such longer period as is required in the Contract Documents with respect to any specific aspect of the Work. Design-Builder shall also repair or replace any adjacent work or materials disturbed or damaged during or as a result of such corrective work. This obligation to repair and replace is in addition to all other warranties and contractual obligations provided elsewhere in the Contract Documents and all liability imposed by operation of law (e.g., tort or statutory claims).

ARTICLE 18 TERMINATION; CPR'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS

18.1 Termination for Cause

18.1.1 CPR may terminate this Agreement, pursuant to the provisions of this Article, for the following causes:

- .1 Design-Builder is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of Design-Builder.
- .2 Design-Builder materially breaches any of the provisions of the Contract Documents or fails, without excuse, to perform the Work within Contract Time.
- .3 Design-Builder abandons the Work, or without justification fails to (a) prosecute promptly and diligently the Work, excluding all cases for which extension of time is provided hereunder, or (b) supply enough properly skilled workers or proper materials for the Work.
- .4 Design-Builder fails, without justification, to make prompt payment to Subcontractors or Material Suppliers for material or labor, and unless such failure arises from CPR's breach of its payment obligations under this Agreement.
- .5 Design-Builder disregards or fails to materially comply with Legal Requirements, or CPR's instructions.
- .6 Design-Builder fails to provide and keep in full force and effect all insurance required by Article 13 hereof or fails to cause General Contractor and all Design Professionals, Subcontractors and Sub-subcontractors to so comply.

18.1.2 To the extent that CPR elects to take legal assignment of subcontracts, agreements with Design Professionals and purchase orders (including rental agreements) following a termination of Design-Builder for cause, Design-Builder shall be deemed to have assigned such agreements to CPR without the need for further action to effectuate such assignment. Nevertheless, upon CPR's request, Design Builder shall execute and deliver all such documents and take all such steps as CPR may require for the purpose of fully vesting in CPR the rights and benefits of Design Builder under such subcontracts, rental agreements, agreements with Design Professionals, purchase orders, or other agreements, with CPR assuming full responsibility for the fulfillment only of those obligations subsequent to the date of the assignment.

18.2 Procedure for Termination

If the conditions stated in Section 18.1 exist, CPR may, without prejudice to any other right or remedy, give written notice to Design-Builder declaring a "Default" and advising of its intention to terminate this Agreement.

Unless within seven (7) days of the delivery of such notice Design-Builder shall cease such violation or otherwise make satisfactory arrangements for correction thereof, which arrangements are set forth in

writing signed by Design-Builder and accepted by CPR, Design-Builder's right to complete the Work shall cease and terminate.

In the event of any such termination, CPR shall immediately give written notice thereof to Design-Builder. If CPR takes over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Design-Builder, and Design-Builder shall be liable to CPR for those reasonable costs to prosecute the Work, including management, supervision, and design support, which exceed the Contract Sum. In such event, CPR may, without liability, take possession of, and utilize in completing the Work, materials and equipment previously paid for by CPR to be incorporated into the Work, whether stored at the Site or elsewhere. Whenever Design-Builder's right to proceed is terminated, Design-Builder shall not be entitled to receive any further payment until the Work is finished.

18.3 Termination for Convenience

CPR shall have the right, upon ten (10) days' written notice, to terminate this Agreement, in whole or in part, for CPR's convenience. If CPR terminates this Agreement for convenience, Design-Builder shall be paid in accordance with Article 5 an amount calculated as follows:

- .1 The Cost of the Work incurred by Design-Builder to the date of termination, including all reasonable costs incurred as a result of the termination or owed pursuant to subcontract;
- .2 A percentage markup of the amount in subsection 18.3.1, above, for Design-Builder's overhead and profit, which percentage shall not to exceed the percentage(s) set forth in the preamble to this Agreement;
- .3 Reasonable out-of-pocket expenses incurred by Design-Builder to close-out the Project; and
- .4 Subtract the aggregate of previous payments made by CPR to Design-Builder for the Project.

The total of 18.3.1 through 18.3.4, above, may not exceed the Contract Sum.

To the extent that CPR elects to take legal assignment of subcontracts, agreements with Design Professionals and purchase orders (including rental agreements) after a termination for convenience, Design-Builder shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such documents and take all such steps, including the legal assignment of such agreements and other contractual rights of Design-Builder, as CPR may require for the purpose of fully vesting in CPR the rights and benefits of Design-Builder under such subcontracts, rental agreements, agreements with Design Professionals, purchase orders, or other agreements, with CPR assuming full responsibility for the fulfillment of only those obligations subsequent to the date of the assignment and except as provided elsewhere in this Agreement, to defend, indemnify and hold Design-Builder harmless against all claims, demands, liability or judgments arising out of CPR's performance of those contracts or completion of the Work.

18.4 Flow-down of Assignment Right

Subcontracts, purchase orders, rental agreements, and design contracts entered into by Design Builder shall contain provisions requiring assignment to CPR in the event of a termination for cause or for convenience, and providing for termination pursuant to the terms of this Agreement.

18.5 Suspension for Convenience

CPR may, without cause and upon notice to Design-Builder, order Design-Builder to suspend, delay or interrupt the Work in whole or in part for such period of time as CPR may determine. The Contract Sum and Contract Time shall be adjusted for reasonable, documented increases in the cost and time caused by such suspension, delay or interruption. Adjustment of the Contract Sum shall include profit. No adjustments shall be made to the extent:

(a) that the suspension, delay or interruption is attributable to the negligence or fault of the Design-Builder or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, or performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

(b) that an equitable adjustment is made or denied under another provision of the Agreement.

ARTICLE 19 ASSIGNMENT AND GOVERNING LAW

19.1 Assignment

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. Design-Builder shall not be entitled to assign or delegate any of its rights or obligations hereunder without the prior written consent of CPR. CPR may assign this Agreement to (i) the State of California, or (ii) an affiliated entity, as that term is defined in California Corporations Code section 150, at any time and without Design-Builder's consent. CPR will promptly provide notice to Design-Builder of any such assignment.

19.2 Governing Law

This Agreement shall be governed by the laws of the State of California, shall be interpreted and enforced in accordance with the laws of the State of California (without respect to its choice of law rules), and is deemed entered into and executed in the city and county of Sacramento. Subject to Rule 66 of the Federal Rules of Civil Procedure and 28 U.S.C. § 959, any litigation between CPR and Design-Builder pertaining to or arising out of or in connection with this Agreement or the Project shall be venued exclusively in a court with subject matter jurisdiction located in San Francisco or Sacramento, California, or other mutually acceptable location. A condition precedent of any such litigation shall be that the claimant has made diligent, good faith efforts to resolve the dispute in accordance with Article 21.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 Ownership and Use of Contract Documents

20.1.1 All plans, drawings, tracings, specifications, programs, calculations, reports, electronic data, BIM files, models and other work product (collectively, the "Documents") prepared and/or furnished by Design-Builder under this Agreement or for the Project shall be the property of CPR at all times, whether the Project is completed or not, and shall be delivered to CPR on the earlier of (i) Final Completion of the Project, or (ii) the date of termination of this Agreement for any reason prior to Final Completion of the Project. Design-Builder and any applicable Design Professionals shall be deemed to have assigned any intellectual property rights (including copyright) in the Documents to CPR.

20.1.2 CPR grants a non-exclusive license to Design-Builder and the Design Professionals to re-use portions of the Documents which represent less than the full design for the Project. To the extent that Design-Builder, General Contractor or any Design Professional, Subcontractor or Sub-subcontractor uses or reuses the Documents, such party shall defend, indemnify and hold CPR and the Indemnified Parties harmless from (and defend against) any and all liability, costs and expenses (including reasonable legal fees and disbursements), relative to claims arising out of or in connection with such use of the Documents by such other party.

20.1.3 CPR and its agents, employees, representatives and assigns may use (in whole or in part, or in modified form), reproduce and make derivative works from the Documents for all purposes CPR may deem advisable in connection with the Project, including without limitation the completion, as well as subsequent renovation and remodeling, of the Work, all without further employment of, or payment of any compensation to, Design-Builder.

20.1.4 CPR's use of the Documents without Design-Builder's involvement is at CPR's sole risk, and CPR shall defend, indemnify and hold harmless Design-Builder and Design Professionals from and against any

and all claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any claim or dispute resolution process, arising out of or resulting from CPR's use of the Design-Build Documents without Design-Builder's involvement, except to the extent directly caused by the negligent error or omission of any Design Professionals in preparing the document. This Section 20.1.4 shall have no applicability if Design-Builder was terminated for a Default.

20.1.5 Design-Builder shall obtain from its General Contractor, Design Professionals, Subcontractors and Sub-subcontractors intellectual property rights and rights of use that correspond to the rights given by Design-Builder to CPR in this Agreement.

20.2 Notices

All notices, requests, documents, approvals and other instruments made, given or delivered pursuant to and in connection with this Agreement shall be in writing to the address stated below, or to such other at any other address duly notified by the applicable party to the other party at its address for service, and shall be deemed to have been duly given (1) when delivered, if delivered in person or by reputable courier, (2) if transmitted before 5:00 p.m. Pacific Time on a business day, on the date transmitted by electronic mail or facsimile (as evidenced by a facsimile confirmation), otherwise on the next business day, or (3) three business days after deposit in the United States Mail, registered or certified mail, return receipt requested, postage prepaid.

The parties' addresses for notice and service are as specified on the cover page of this Agreement.

20.3 Integrated Agreement; Modification

This Agreement represents the entire and integrated agreement between CPR and Design-Builder for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or otherwise modified only by written instrument signed by each of the parties or pursuant to the change procedures set forth in Article 14. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern. Except as expressly provided elsewhere, the Contract Documents shall not be construed to create a contractual relationship of any kind between CPR and a General Contractor, Subcontractor, Sub-subcontractor, Material Supplier, or Design Professional.

20.4 No Joint Venture

Design-Builder is an independent contractor for all purposes, and nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership, or impose a fiduciary duty, trust, or partnership obligation or liability on or with regard to any of the parties. Except where otherwise expressly approved by another party in writing, each party shall act hereunder only on an individual basis and shall not be authorized to act as agent or representative of the other party nor have the power or authority to bind the other party for any purpose. No party shall so bind the other party, or represent to anyone that it has the authority to bind the other party, or make any other representation about or on behalf of the other party.

20.5 Waiver

No action or failure to act by CPR or Design-Builder shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach, except as may be specifically agreed in writing.

20.6 Attorneys' Fees

If a party commences any action or proceeding against the other party for any reason arising out of, in connection with, or related to the Agreement or the Project, the prevailing party in such action or proceeding shall be entitled to recover such amount as the court or arbitrator may judge to be reasonable attorneys' fees, together with all costs, charges and expenses related to the suit, including all expert and consultant fees, provided that such prevailing party is determined to have made a reasonable and good faith effort to fully comply with the dispute resolution provisions of Article 21.

20.7 Severability

The invalidity of any covenant, restriction, condition, limitation or any other part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract Documents, except when such invalidity would constitute an essential deviation from the general intent and purpose of the parties as reflected in the Contract Documents.

20.8 Procurement Requirements

In selecting Subcontractors and Design Professionals not approved by CPR at the signing of this Agreement, Design-Builder shall comply with the following procurement requirements:

20.8.1 Expedited Formal Bids. Design-Builder shall utilize the expedited formal bidding process below on all higher cost contracts – i.e., those contracts whose total contract price is estimated to be valued at \$750,000 or more. The expedited formal bidding process shall also presumptively apply to contracts whose total contract price is estimated to be valued at between \$75,000 - \$750,000, unless CPR determines that urgent circumstances require use of the urgent informal bidding process (see Section 20.8.2 below).

- (a) Design-Builder shall develop and issue a Request for Proposal ("RFP") and will formally solicit at least three bids by publishing the solicitation in a trade publication of general circulation and/or an internet-based public RFP clearinghouse for a period of at least one week (7 calendar days). Design-Builder may, in his discretion, identify and solicit additional bidders, and shall solicit any bidders requested by CPR. If fewer than three bidders respond to the RFP, Design-Builder shall make reasonable, good faith efforts to identify additional bidders and solicit their responses to the RFP; Design-Builder shall document such efforts and report same to CPR.
- (b) The period for response to the RFP shall be at least 30 days.
- (c) Criteria for selection of the successful bidder shall be values-based and may, in the reasonable determination of Design-Builder, include such factors as cost, reputation of the bidder for responsiveness and timeliness of performance, quality of service or product performance, ability of the bidder to provide innovative methods for service delivery, and other similar factors Design-Builder deems relevant.
- (d) Design-Builder may conduct interviews of some or all bidders, answer questions posed by bidders and provide additional information to bidders. For contracts whose total contract price is estimated to be valued at \$750,000 or more, Design-Builder shall conduct interviews of at least the top two bidders.
- (e) Design-Builder shall list all bidders in Design-Builder's documentation of the procurement and report same to CPR.

20.8.2 Urgent Informal Bids. With CPR's approval, Design-Builder may use an alternative second process described below when urgent circumstances require Design-Builder to move more quickly than permitted by the expedited formal bidding process; however, competitive bidding is still required to the extent possible. With CPR's approval, Design-Builder may utilize the urgent informal bidding process for contracts whose total contract price is estimated to be valued at between \$75,000 - \$750,000; Design-Builder may also utilize the urgent informal bidding process for any contract whose total contract price is reasonably estimated to be valued at less than \$75,000.

- (a) Design-Builder will make reasonable, good faith efforts to identify and solicit at least three proposals and will accept additional unsolicited bids that may be submitted.
- (b) Design-Builder may, in its discretion, develop an RFP prior to soliciting bidders and establish a response period with respect to any such RFP.

- (c) Criteria for selection of the successful bidder shall be values-based, and may, in the reasonable determination of Design-Builder, include cost, reputation of the bidder for responsiveness and timeliness of performance, quality of product or service, ability of the bidder to provide innovative methods for service delivery, and other similar factors Design-Builder deems relevant.
- (d) Design-Builder shall list all bidders in Design-Builder's documentation of the procurement and report same to CPR.

20.8.3 Sole Source Bidding. Finally, with CPR's approval, Design-Builder may utilize a sole source when Design-Builder has determined, after reasonable effort under the circumstances, that there is no other reasonably available source or where the procurement is reasonably estimated at less than \$25,000. Design-Builder shall identify to CPR any contract that is sole-sourced along with an explanation as to the basis for sole-sourcing the contract.

ARTICLE 21 DISPUTE RESOLUTION

21.1 Scope

All claims, disputes or other matters in question among the Parties which arise from or in connection with this Agreement ("Claims") shall be resolved as provided in this Article 21. The responsibility to substantiate a Claim rests with the party making the Claim.

21.2 Continued Performance

At all times during the pendency of a Claim or a dispute resolution proceeding hereunder, Work shall continue unless otherwise directed by CPR.

21.3 Notice

A notice of potential Claim shall be made to the other party at the earliest opportunity in an effort to afford maximum opportunity to avoid Project delay or cost impacts. Notice for Claims related to changes in the Work or requested extensions of time shall be provided in accordance with the applicable notice provisions for same in this Agreement. All notices of potential Claim must be made by written notice and shall contain the information listed below, provided that, if any of the required information is not available at the time the notice of potential Claim is submitted, the claimant shall provide all information which is available and a statement indicating when the remaining information will be provided:

- .1 The date of the event giving rise to the Claim and, if applicable, the date when the event ceased;
- .2 The nature of the occurrence or condition giving rise to the Claim
- .3 Identification of the contractual provisions affected and an explanation of how the Claim relates to those provisions
- .4 An estimate of effect upon the Contract Amount and/or Cost of the Work, including an itemized breakdown of additional cost, if any; and
- .5 An estimate of the effect, if any, upon the Schedule and the Contract Time, including a comparison of the Schedule and schedules prepared in connection with the Claim.

21.4 Time Limits on Claims

Subject to Section 12.9, any notice of potential Claim by any party must be initiated within fourteen (14) days after occurrence of the event giving rise to such Claim or within seven (7) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Design-Builder's failure to deliver the notice of potential Claim with its required documentation within the applicable time frame shall be deemed a waiver of the Claim by Design-Builder. Also, to the maximum extent possible, a notice of potential Claim shall be provided before any additional work is performed or additional cost is incurred,

with a specific request that a response be provided by the date identified in order to avoid the harm contemplated by the notice of potential Claim.

21.5 Informal Dispute Resolution

CPR and Design-Builder shall attempt to resolve their disputes by reasonable business-like negotiations in accordance with the following procedures. Upon receipt of a notice of potential Claim, Program Manager and Design-Builder's project manager shall meet face-to-face to review and consider the claim. This meeting shall occur at the earliest practicable date and shall be for the express purposes of: (1) exchanging and reviewing all pertinent documents and information relating to the matters and issues in dispute, (2) freely and candidly discussing each party's position, and (3) reaching agreement upon a reasonable, compromise resolution of the claim.

If the Program Manager and Design Builder's project manager are unable to resolve the claim, a senior representative from CPR and a senior representative from Design-Builder each shall review the claim in detail and then meet face-to-face to discuss and resolve the matter. This meeting of senior management representatives shall occur no later than fifteen (15) days after the meeting of the project managers, unless the parties both agree upon a longer period of time. CPR and Design-Builder each shall designate a senior representative for purposes of this section within fourteen (14) days of execution of this Agreement. Either party may, if necessary, designate a different senior representative at any time during the course of the Project. If any claim remains unresolved after the meeting of the senior management representatives, CPR and Design-Builder agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator.

21.6 Independent Expert

If the Claim is not resolved within seven (7) days after the senior management meeting, then CPR may appoint one or more independent, third-party experts ("Independent Expert") to review the Claim. Once appointed, the Independent Expert shall review any technical analysis or recommendation, review material submitted by the parties and, as the Independent Expert deems appropriate, meet with the parties and other persons having information relevant to the issues in dispute before rendering an opinion as to an appropriate resolution of the Claim, giving consideration to the factual and contractual issues involved. Within twenty-one (21) days after appointment, Independent Expert shall deliver a written recommendation to the other parties to the Claim. CPR may utilize Independent Expert's report as it deems appropriate in responding to Claims or in assessing withheld amounts or backcharges. The Independent Expert's fees shall be shared equally by CPR and Design-Builder. Independent Expert's opinion, conclusions and findings shall be admissible in any subsequent dispute resolution proceeding only to the extent agreed by both parties and so ordered by a court pursuant to the California Evidence Code or the Federal Rules of Evidence as appropriate.

21.7 Non-Binding Mediation

If the Claim has not been resolved as provided above, either party may, at its option, initiate mediation proceedings. These proceedings shall be conducted by a third-party mediator who is acceptable to both parties and experienced in design and construction in California on large health-care projects. The mediator shall be given written statement(s) of the Parties and may inspect the Site and any Project documents. The mediator shall schedule a mediation session, to be attended by CPR, Program Manager and Design-Builder, together with any other person who has an interest in the Claim, within a reasonable time of the mediator's selection. The mediation shall be attended by representatives of CPR and Design-Builder with authority sufficient to resolve the dispute. The cost of the mediation shall be borne equally by CPR and Design-Builder. No minutes shall be kept and the proceeding shall be confidential and not admissible except as provided below. The entire mediation process must be completed within thirty (30) days of the initiation of mediation proceedings, unless the Parties agree to extend the mediation period.

21.8 Confidentiality

Any mediation pursuant to Section 21.7 shall be treated as confidential and privileged, pursuant to California Evidence Code Sections 1115 through 1128. If, as a result of the mediation, a negotiated settlement is reached, the parties agree that such settlement shall be reduced to writing and that the parties waive the protection of Evidence Code Sections 1115 through 1128 to the extent necessary to enforce the mediated settlement. Such agreement shall be enforceable under California Code of Civil Procedure Section 664.6 and Evidence Code Section 1123 and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

21.9 Unresolved Impasse

If the foregoing procedure cannot resolve the dispute, the parties are free to pursue any legal and equitable remedies available to them.

21.10 Application of Procedures

Design-Builder shall cause the provisions of this Article 21 to be incorporated in contracts with General Contractor and all Subcontractors, Sub-subcontractors, Material Suppliers, and Design Professionals, so that all such parties shall also be bound to this dispute resolution procedure. This dispute resolution procedure shall not in any way affect any statutes of limitation relating to any Claim, dispute or other matter arising out of the Contract Documents.

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Signatures on Following Page

Not for Signature

By their signature below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

<p>CPR [Insert Name]</p> <p>By _____ (Signature)</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>DESIGN-BUILDER [Insert Name] California Contractor License No. _____</p> <p>By _____ (Signature)</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

Not for Signature

*Modular Health Services Clinics and Administration
Avenal State Prison*

Document 007300

RELEASE OF CLAIMS

DESIGN-BUILDER: _____ DATE: _____

PROJECT: *Modular Health Services Clinics and Administration at Avenal State Prison*

NET FINAL PAYMENT CALCULATED BY CALIFORNIA PRISON HEALTHCARE RECEIVERSHIP CORPORATION (CPR CORP): [Net Final Payment to be furnished by CPR Corp Representative]

Mail completed and signed Release of Claims form by certified mail, return receipt requested, to:

[Address to be furnished by CPR Corp Representative]

CAUTION: Failure of Design-Builder to complete, sign, and return this form to the above address within thirty (30) days of Design-Builder's receipt of this form shall constitute Design-Builder's binding acceptance of the final accounting and above Net Final Payment calculated by CPR Corp.

Choose one:

Approval of CPR Corp's final accounting and calculated Net Final Payment; Release of All Claims

Design-Builder agrees with CPR Corp's accounting and calculated Net Final Payment for the Contract set forth above and agrees that payment of said Net Final Payment pursuant to said accounting shall constitute payment in full for all labor, services, equipment or materials furnished in performance of the above Contract. Upon receipt by Design-Builder of a check from CPR Corp in the sum of \$_____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release CPR Corp and the State of California from any and all liability for any and all services, claims, demands for monetary compensation or damages arising out of, or related to the performance of the above Contract that exceed the amount of said Net Final Payment.

Claim for additional money; Partial Release of Claims

Design-Builder does not agree with CPR Corp's final accounting and calculated Net Final Payment for the Contract set forth above and makes claim for the additional sum of \$_____ (Additional Sum) above and beyond the amount of said calculated Net Final Payment. Upon receipt by Design-Builder of a check from CPR Corp for the calculated Net Final Payment in the sum of \$_____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release CPR Corp and the State of California from any and all liability for, any and all services, claims, demands for monetary compensation or damages arising out of, or related to the performance of the above Contract that exceed the sum of (1) the above calculated Net Final Payment plus (2) the above Additional Sum plus (3) interest and/or costs, if any, provided by law.

Design-Builder understands that Stop Notice actions are not included in the calculations herein and are not included in the proposed Net Final Payment.

DATE: _____ DESIGN-BUILDER: _____
(Please type or print)

(Signature): _____ TITLE: _____