RUCKS PARK

DESIGN-BUILD AGREEMENT

This Design-Build Agreement (the "Agreement") is entered into this ____ day of _____, 2013 by and between THE CITY OF NORTH MIAMI, FLORIDA (the "Owner") and _____ (the "Design-Builder").

RECITALS

WHEREAS, the Owner has issued a Request for Proposals dated _____, 2013 pursuant to which the Owner solicited proposals from design-build teams to design and construct a community park known as RUCKS PARK to be located at 13760 to 13780 Northwest 5th Avenue, North Miami, Florida (the "Project"); and

WHEREAS, the Owner has selected the Design-Builder to perform the design, engineering and construction services set forth in this Agreement according to the Contract Documents (hereinafter defined); and

WHEREAS, the Design-Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **"Agreement" or "Contract"** means this Design-Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.2 **"Applicable Laws"** means all laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Site and/or the Work in the State of Florida.

1.3 **"Application for Payment"** means the document prepared and submitted by the Design-Builder and approved by the Owner showing the Design-Builder's contemplated progress payments, the requirements of which are more fully described in the Agreement.

1.4 **"Architect" or "Engineer"** means _____, a _____ [corporation, partnership, etc.] duly licensed and registered under the laws of the State of Florida.

1.5 **"Authorized Representatives"** means those individuals appointed by the Owner

SAMPLE

and the Design-Builder from time to time in accordance with the provisions of this Agreement.

1.6 **"Certificate of Substantial Completion"** means a certificate prepared by the Design-Builder and forwarded to the Owner stating that the Design-Builder believes in good faith that the Project is sufficiently complete so it can be used for its intended purpose.

1.7 **"Certificate of Final Completion"** means a certificate prepared by the Design-Builder and forwarded to the Owner stating that the Design-Builder believes in good faith that the Project is finally complete and that the Design-Builder is entitled to Final Payment in accordance with the provisions of Section 5.11 hereof.

1.8 **"Change Directive"** means a written order signed by the Owner directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Contract Price. A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.9 **"Change Order"** means a written order signed by the Design-Builder and the Owner authorizing a change in the Work, which also may adjust the Contract Price and Contract Time, and which shall constitute a Modification. The Contract Price may be changed only by Change Order.

1.10 **"Change Proposal"** means a proposal for a Change Order submitted by the Design-Builder to the Owner, either at the request of the Owner, or at the Design-Builder's own initiative.

1.11 **"Construction Allowance Items"** means those items included in the Contract Price, as allowances, if any, as more fully described on Exhibit B attached hereto and incorporated herein by reference.

1.12 **"Construction Notice to Proceed"** means the notice given by the Owner to the Design-Builder directing the Design-Builder to commence construction of the Project.

1.13 **"Construction Phase"** means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed (and Release For Construction signed and sealed plans) and ending on the date of Final Completion of the Project.

1.14 **"Construction Work"** means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents.

1.15 **"Contingency Costs"** means those items of Contract Price attributable to a contingency, if any.

SAMPLE

1.16 **"Contract Documents"** means those documents set forth on Exhibit C all of which, together with this Agreement, form the entire integrated agreement between the Owner and the Design-Builder.

1.17 **"Contract Time"** means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.18 **"Contract Price"** consists of the lump sum price for the Work which are paid for by the Owner to the Design-Builder.

1.19 **"CPM" or "Schedule"** means a critical path method schedule in the form of precedents, networks and time sequences.

1.20 **"Credits"** means the difference, if any between the Contract Price and any cost savings to the Owner for any and all cost savings initiatives and the Design-Builder's failure to provide services included in the Scope of Work.

1.21 **"Day" or "Days"** means calendar days.

1.22 **"Design-Builder" or "Design-Build Firm"** means one single administrative entity, responsible for design and construction under one contract where services are within the scope of practice of architecture, or engineering, as defined by the laws of the State of Florida and where services are within the scope of practice of construction contracting, as defined by the laws of the State of Florida.

1.23 **"Design-Builder Event of Default"** shall have the meaning set forth in this Agreement.

1.24 **"Design Materials"** means any and all documents, shop drawings, reports, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design-Builder (a) to the Owner under the Contract Documents or (b) developed or prepared by the Design-Builder specifically to discharge its duties under the Contract Documents.

1.25 **"Design Phase"** means the period set forth in the Schedule commencing with the Design-Builder's receipt of a Notice to Proceed with Design and ending upon the date the Owner and agencies approve the Release For Construction Documents.

1.26 **"Design Work"** means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.27 **"Excusable Delay"** shall have the meaning set forth in Section 4.6.2 hereof.

SAMPLE

1.28 **"Final Completion"** means the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.29 **"Force Majeure"** means labor dispute, fire, earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage by persons other than the Design-Builder.

1.30 **"Governmental Approvals"** means those governmental (including agency) actions necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, environmental compliance, environmental cleanup, encapsulating, handling, no further action conditions, and modifications to or variances from applicable building codes.

1.31 **"Contaminated Materials" or "Contamination"** means those items identified on Exhibit G hereto.

1.32 **"Indemnified Parties"** means the Owner, its agents, partners and employees.

1.33 **"Liquidated Damages"** means the damages payable by the Design-Builder to the Owner in the event the Design-Builder does not achieve Substantial Completion of the Project by the date required on the Schedule, as adjusted, as more fully described in Section 4.8 hereof.

1.34 **"Modification"** means an amendment to this Agreement executed by the Parties after the date hereof.

1.35 **"Notice to Proceed Design "**means the notice given by the Owner to the Design-Builder stating that the Design-Builder is authorized to begin the design of the Project.

1.36 **"Order of Magnitude Documents"** means the drawings, specifications and other documents prepared by the Design-Builder. The Order of Magnitude Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Release For Construction Documents in accordance with the requirements of the Contract Documents, including architectural, engineering, landscaping, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.37 **"Owner Event of Default"** shall have the meaning set forth in Section 12.3 hereof

1.38 **"Party"** or **"Parties"** means the Owner and/or the Design-Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

SAMPLE

1.39 **"Payment and Performance Bonds"** means the payment bond and performance bond issued by the Surety, in the form set forth in the Contract Documents, covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor.

1.40 **"Project"** means a community park known as Rucks Park, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.41 **"Punch List"** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a certificate of occupancy.

1.42 **"Release For Construction Documents"** means the plans and specifications prepared by the Design-Builder, approved by the Owner, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Release For Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the plans and specifications must be approved by the Owner and the respective agencies.

1.43 **"Retainage"** means the amount withheld from each and every progress payments from the Owner to the Design-Builder from time, as more fully described in this Agreement.

1.44 **"Schedule"** means the schedule to which the Design-Builder has agreed to substantially complete the Work. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.45 **"Scheduled Date of Substantial Completion"** means the date the Design-Builder has agreed to achieve Substantial Completion of the Project in accordance with the Schedule, as adjusted.

1.46 **"Scope Change Costs"** means those items of Contract Price attributable to changes in scope of the Work pursuant to a Change Order, as provided in Article 6.

1.47 **"Separate Contractors"** means those individuals or entities who have entered into arrangements with the Owner for the provision of labor, materials or other services in connection with the Project.

1.48 **"Site"** is the real property on which the Project will be located.

SAMPLE

1.49 **"Subcontract"** means an agreement between the Design-Builder and another person or entity engaged to perform a portion of the Work.

1.50 **"Subcontractor"** means an individual or entity who has entered into an arrangement with the Design-Builder for the provision of labor, materials or other services required to be performed by the Design-Builder under the Contract Documents.

1.51 **"Substantial Completion"** means 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 that it may be used by the Owner for its intended purpose.

1.52 **"Surety"** means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the treasury list for the amount of its responsibility; and (b) licensed to do business in the State of Florida.

1.53 **"Unexcusable Delay"** shall have the meaning set forth in Section 4.6.2.

1.54 **"Work"** or **"Scope of Work"** means all labor, materials and services required to be performed or provided by the Design-Builder pursuant to the provisions of the Contract Documents.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work

The Design-Builder covenants and agrees that it shall be responsible for performing and completing the Work in accordance with the Scope of Work set forth in the Contract Documents and Applicable Laws. The Design-Builder covenants that the Design Work and the Design Materials provided shall be appropriate for the purposes stated in the Scope of Work. Although it is the responsibility of the Design-Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change may be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design-Builder shall be responsible for achieving Substantial Completion of the Project by the date of Substantial Completion set forth in the Schedule, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within 60 days thereafter.

2.2 Professional Standard; Ownership of Documents

2.2.1 Standards of Performance. The Work shall be performed in accordance with

SAMPLE

the professional standards applicable to projects, buildings, parks, playgrounds or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design-Builder. The Design-Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Owner, except as otherwise specifically provided herein.

2.2.2 Use of Design Materials.

2.2.2.1 The Owner shall have unlimited rights to copy and use in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Owner, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design-Builder agrees to and does hereby grant to the Owner and any assignee or successor of the Owner as owner of the Project a royalty-free license to any such Design Materials as to which the Design-Builder may assert any rights under the patent or copyright laws. The Design-Builder hereby assigns outright and exclusively to the Owner all copyrights in the design appearance of the Project. The Design-Builder, will secure such license and use rights and shall defend, indemnify and hold the Owner and any successors or assigns harmless from any claims from such entities for copyright or patent infringement.

2.3 Local Conditions; Environmental Site Conditions

2.3.1 Local Conditions. The Design-Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials including but not limited to contaminated material and contaminated groundwater; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface and sub-surface conditions of the ground and groundwater; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design-Builder encounters subsurface or concealed conditions which differ materially from that actually known by the Design-Builder on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then notice by the Design-Builder shall be given to the Owner promptly before conditions are disturbed and in no event later than four (4) Business Days after the first observance of the conditions, as a condition precedent, if a Change Order is contemplated by the Design-Builder due to such condition.

2.3.2 Contaminated Materials and Contamination. The Parties' agree that there are contaminated material and contamination on the Site at various locations and in the groundwater at various locations for which environmental compliance shall be the responsibility of the Design-Builder as part of the Contract.

SAMPLE

2.4 Order of Magnitude Documents and Release For Construction Documents

2.4.1 General. Once the Owner gives the Design-Builder the Notice to Proceed Design, the Design-Builder shall commence preparation of the Order of Magnitude Documents for review and approval by the Owner. After such approval, the Design-Builder shall prepare the Release For Construction Documents. The Order of Magnitude Documents and Release For Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Release For Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Owner's review of the Order of Magnitude Documents and the Release For Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibits H and J hereto, and in accordance with the dates therefore set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design-Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Owner of any deviation from, or of the Design-Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design-Builder and approved by the Owner.

2.4.2 Reliance on Approvals. If the Owner modifies or otherwise changes in a material way its approval of a given system after such system has been designed and approved, or modifies the original Scope of Work in a material manner requiring modification to one or more systems which have been designed and approved, the Design-Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof, provided that prior to such approval the Design-Builder has made the Owner aware of future design decisions which may be affected by such approval. No Change Order shall be issued to the extent such modification is due to the fault or neglect of the Design-Builder.

2.4.3 Review of Contract Documents and Field Conditions. The Design-Builder shall be responsible for all errors, inconsistencies or omissions in the Contract Documents. The Design-Builder shall take field measurements, perform investigations, and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design-Builder with the Contract Documents before commencing activities. The Design-Builder shall perform the Work in accordance with the Contract Documents.

2.5 Legal Requirements

The Design-Builder shall comply with Applicable Laws, and shall give applicable notices pertaining thereto. Except with respect to Governmental Approvals requiring the Owner specifically, the Design-Builder shall prepare and file all documents required to

SAMPLE

obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution of the Work and completion of the Project.

2.6 Services and Facilities

2.6.1 General. The Design-Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.6.2 Supervision. The Design-Builder shall supervise and direct the Work. The Design-Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design-Builder shall be responsible to the Owner for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design-Builder, such term shall include the negligence, fault or omission of, the Design-Builder's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design-Builder. The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than the Design-Builder.

2.6.3 Coordination. The Design-Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.6.4 Cooperation. The Design-Builder shall assist the Owner's staff and reasonably cooperate with the Owner's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.6.5 Management. The Design-Builder shall implement suitable management systems and Work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work.

2.6.6 Reports. The Design-Builder shall prepare and submit to the Owner as a condition precedent to payment, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Owner. Such reports shall be furnished at the time of submission of each Application for Payment. As part of such report, the Design-Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to

SAMPLE

correct Schedule slippage. The monthly report shall also set forth the Design-Builder's projected progress for the forthcoming month.

2.7 Warranty

The Design-Builder warrants to the Owner for up to two years after Final Completion that any and all materials, equipment and furnishings incorporated in the Work 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 with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design-Builder, improper operation, or normal wear and tear under normal usage.

2.8 Taxes

The Design-Builder shall pay, as part of its Contract Price, all existing and future applicable Federal, State and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work (excluding taxes based on the Design-Builder's income). In the event the Design-Builder receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction shall decrease the Contract Price pursuant to the Change Order provisions of this Agreement.

2.9 Access by Owner

The Design-Builder shall afford the Owner and its authorized designees access to the Project Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.10 Use of Site

The Design-Builder shall, prior to on-site testing and inspection activities and prior to on-site mobilization for demolition and construction, prepare a mobilization plan for the Owner's review and approval based upon information provided to the Design-Builder by the Owner from time to time concerning the anticipated availability of the Site or portions thereof for tests and inspections to be performed in connection with the preparation of the Order of Magnitude Documents, for remedial work relating to Contaminated Materials and contamination, and for demolition, excavation, dewatering and construction activities. The foregoing mobilization plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Owner. The Design-Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design-Builder shall at all times confine its access and use of the Site to the areas designated by the Owner from time to time as being delivered and available to the

SAMPLE

Design-Builder.

2.11 Patents, Trademarks, Copyrights

The Design-Builder shall pay, as part of the Contract Price, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design-Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Indemnified Parties, and shall save the Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as Contract Price), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Owner, other than pursuant to the recommendation or suggestion of the Design-Builder; provided however, if the Design-Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design-Builder shall be responsible for any loss resulting unless the Design-Builder has provided the Owner with prompt written notice of the Design-Builder's belief, and the Owner has nevertheless elected to go forward with such design, process or product so specified.

2.12 Rubbish; Debris; Cleanup

During the performance of all on-site Work, the Design-Builder shall at all times, as part of its Contract Price, keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Owner, the Design-Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design-Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design-Builder fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder as a Contract Price.

2.13 Permits, Fees and Notices

Unless otherwise provided in the Contract Documents and subject to the provisions of Section 2.5 hereof, the Design-Builder shall secure and pay (as part of its Contract Price) for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. The Design-Builder shall comply with and give any and all notices required by Applicable Laws.

2.14 Shop Drawings, Product Data and Samples

2.14.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design-Builder shall maintain at the site one record copy of the Release For Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and

SAMPLE

Construction Phase. In addition, the Design-Builder shall maintain at the site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Owner upon completion of the Work.

2.14.2 Shop Drawings, Product Data and Samples.

2.14.2.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder to illustrate some portion of the Work.

2.14.2.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

2.14.2.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.14.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design-Builder proposes to conform the construction to the Release For Construction Documents.

2.14.2.5 The Design-Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. The Owner has determined that it does not wish to review Shop Drawings, Product Data, Samples and similar submittals. If at a later date, the Owner wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design-Builder, and shall conduct such review so as not to delay the Work.

2.14.3 Responsibility. The Design-Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design-Builder has specifically informed the Owner of such deviation at the time of the submittal and The Owner has given written approval to the specific deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

2.15 Tests and Inspections

2.15.1 Initial Tests and Inspections. Tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be included in the Contract Price. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may observe such procedures.

SAMPLE

2.15.2 Additional Tests and Inspections. If the Owner or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.15.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so the Owner may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid as part of the Contract Price, subject to the limitations set forth in Section 2.21 hereof. If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents, the costs thereof shall also be paid as part of the Contract Price.

2.15.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to the Owner.

2.15.4 Timing of Testing. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.16 Execution, Correlation and Intent

2.16.1 Execution of Agreement. Execution of this Agreement by the Design-Builder is a representation that the Design-Builder has visited the site, become familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.16.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design-Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design-Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.16.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall be the responsibility of the Design-Builder.

2.16.4 Meaning of Words. Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

2.17 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design-Builder shall

SAMPLE

provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design-Builder shall not permit any Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Owner has made payment to the Design-Builder. If such liens are imposed, the Design-Builder will satisfy, discharge or bond such liens within ten (10) Days after written notice from the Owner of the existence of such liens. If the Design-Builder fails to satisfy, discharge or bond such liens within such ten (10) Day period, the Owner may bond such liens and charge the cost of the bond and any other reasonable costs in connection therewith to the Design-Builder as well as withhold from the Design-Builder the amount of such lien under the provisions of Section 5.8.

2.18 Cutting and Patching.

2.18.1 Cutting and Patching of the Work. The Design-Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

2.18.2 Damage to Work of Owner or Separate Contractors. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a Separate Contractor except with written consent of the Owner and of such Separate Contractor, such consent not to be unreasonably withheld. The Design-Builder shall not unreasonably withhold consent from the Owner or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.19 Uncovering of Construction Work

2.19.1 Uncovering. If a portion of the Construction Work is covered contrary to the Owner's written request or to requirements of the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner's observation and be replaced without change in the Schedule or Contract Price; the costs of such uncovering and replacement shall be included in the Contract Price.

2.19.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such Construction Work and it shall be uncovered by the Design-Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner and shall increase the Contract Price. An appropriate time

SAMPLE

extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design-Builder shall pay such costs as Contract Price, unless such condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

2.20 Correction of Work

2.20.1 Work Rejected by Owner. The Design-Builder shall promptly correct Construction Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, in accordance with the provisions of Section 2.20.3. The Design-Builder shall bear the costs of correcting such rejected Construction Work, as a Contract Price, including additional testing and inspection and compensation for services and expenses of the Owner made necessary thereby.

2.20.2 Warranty. If within two years after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties under the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner. This period of two years shall be extended with respect to portions of the Work first performed after Final Completion to one year after Substantial Completion of such Extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Owner shall give such notice after discovery of the condition. Such costs shall be payable as provided in Section 5.1.

2.20.3 Removal of Work. The Design-Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Builder nor accepted by the Owner. The costs incurred in removing such Work shall be included in the Contract Price, subject to the limitation set forth in Section 2.21 hereof.

2.20.4 Failure to Correct Nonconforming Work. If the Design-Builder fails to correct nonconforming Construction Work within a reasonable time, the Owner may correct it in accordance with the terms of this Agreement. If the Design-Builder does not proceed with correction of such nonconforming Construction Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and store the salvable materials or equipment at the Design-Builder's expense. If the Design-Builder does not pay costs of such removal and storage within ten (10) Days after written notice, the Owner may, upon ten (10) additional Days written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design-Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design-Builder should have borne, the Design-Builder shall pay such excess to the Owner; if such proceeds are in excess of the costs which the Design-Builder should have borne, such

SAMPLE

excess shall be paid by the Owner to the Design-Builder. If such costs arise during the performance of the Work, such costs shall be charged against the Contract Price. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 5.1.

2.20.5 Damaged or Destroyed Work. The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Design-Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be set off against the Contract Price. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 5.1.

2.20.6 No Limitation. Nothing contained in this section 2.20 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the time period of two years as described in Section 2.20.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

2.21 Acceptance of Nonconforming Work.

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 3
OWNER'S DUTIES AND RESPONSIBILITIES

3.1. Information and Services Required of the Owner.

3.1.1 Owner Designation of Authorized Representative. The Owner shall designate, from time to time, one or more representatives authorized to act on the Owner's behalf with respect to the Project, together with the scope of his/her respective authority. The Design-Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority.

3.1.2 Communication. During the term of this Agreement, the Owner shall communicate only through the Design-Builder's Authorized Representative.

3.1.3 Consent and Approval. Whenever the Owner's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design-Builder's performance of the Work, and this Agreement does not expressly state that the Owner may act in its sole discretion, such consent, approval,

SAMPLE

satisfaction or determination shall not be unreasonably withheld. The Owner shall cooperate with the Design-Builder and shall furnish decisions, information, and approvals required by this Agreement.

3.1.4 Governmental Approvals. The Design-Builder shall be responsible for obtaining the Governmental Approvals.

3.2 Financial Obligations. The Owner will consult with the Design-Builder with respect to the financing agreements to the extent that they involve obligations of the Design-Builder.

3.3 [Intentionally deleted]

3.4 Activities on the Site by Owner or Separate Contractors

3.4.1 Owner's Right to Award Separate Contracts. The Owner reserves the right to perform Work or operations related to the Project, with the Owner's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.4.2 Integration of the Work with Separate Contractors. Following the request of the Owner, the Design-Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Owner for approval. The plan shall be fair and reasonable for the Design-Builder and the Separate Contractors, and the Design-Builder shall work with the Separate Contractors to reach agreement on such plan. The Design-Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.4.3 Coordination. The Design-Builder shall provide for the coordination of the activities of the Design-Builder and its Subcontractors with the activities of the Separate Contractors. The Design-Builder shall participate with all Separate Contractors and the Owner in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design-Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.4.4 Use of Site. The Design-Builder shall afford the Owner and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design-Builder shall also connect and coordinate its Work and operations with the Owner and all Separate Contractors' operations as required by the Contract Documents. The Owner shall direct the Separate Contractors to cooperate with the Design-Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design-Builder.

SAMPLE

3.4.5 Deficiency in Work of Separate Contractors. If part of the Design-Builder's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design-Builder. The Design-Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design-Builder so to report shall constitute acceptance by the Design-Builder of the work of Separate Contractors as fit and proper to receive the Design-Builder's Work.

3.4.6 Claims Involving Separate Contractors. The Design-Builder shall defend and save harmless the Owner and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design-Builder's obligations hereunder, the costs of which shall be included in the Contract Price. In the event that the Design-Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design-Builder shall, in such event, pay, all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays. If any Separate Contractor shall assert a claim or bring an action against the Owner alleging damage due to the fault or neglect of the Design-Builder, the Owner shall immediately notify the Design-Builder, who shall defend such claim. If it is determined that the Design-Builder was at fault, the Design-Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as a Contract Price.

3.5 Assignment of Separate Contracts

If the Owner determines that it wishes to assign to the Design-Builder one or more contracts between the Owner and the Separate Contractor, it shall give the Design-Builder written notice of such desire, including in such notice a copy of such contract for the Design-Builder's review and approval.

3.6 Owner's Right to Stop the Work.

If the Design-Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by written order signed by the Owner, may deliver a notice to the Design-Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design-Builder commence a cure of such persistent and material failure within twenty (20) Days and diligently pursue such cure thereafter. In the event that the cure is not commenced and pursued diligently, the Owner may, by written notice to the Design-Builder, order the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Owner to stop the Work shall not

SAMPLE

give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity and shall not give rise to any liability of the Owner to the Design-Builder resulting from any delay.

3.7 Owner's Right to Carry out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) Day period after receipt of written notice from the Owner to commence and diligently continue correction of such default or neglect with diligence and promptness, the Owner may after such seven (7) Day period give the Design-Builder a second written notice to correct such deficiencies within such second seven (7) Day period. If the Design-Builder within such second seven (7) Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Owner, without prejudice to other remedies the Owner may have, may correct such deficiencies. In such case a set off deducting from payments then or thereafter due to the Design-Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design-Builder are insufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 4
TIME

4.1. Progress and Completion

Time limits stated in the Contract Documents are of the essence of this Agreement. By executing the Agreement, the Design-Builder confirms that the Contract Time is a reasonable period of time for achieving Substantial Completion and Final Completion of the Work.

4.2 Schedule Obligations

4.2.1 Contract Schedule or CPM. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Proceed Design. The Schedule shall not be modified except by a Modification.

The Design-Builder's Schedule shall be calculated using Primavera Suretrak; or Primavera P3. Said Schedule will also be used by the Owner to monitor progress and be the basis for the assessment of extensions of time and the effect of Delay on the progress of the Work, if any.

The Schedule shall be prepared by the Design-Builder in accordance with the following:

SAMPLE

i. The Schedule shall show the order and procedure in which the Design-Builder proposes to carry out the Work and shall be submitted within seven (7) calendar days of the signing of the Contract.

ii. This Schedule shall become the Accepted Schedule upon acceptance by the Owner. The Accepted Schedule shall have regard to the Contract Time and any other milestones, and/or restraints set out in the Contract.

iii. The Schedule shall show the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Work within the Contract.

iv. It shall show the order and interdependence of activities and the sequence for accomplishing the Work and describe all activities in sufficient detail so that the Owner can readily identify the Work and measure the progress of each activity.

v. The Design-Builder shall show each activity with a beginning work date, duration, the resources required to satisfactorily complete the Work in the time allotted, and a monetary value. The Schedule shall have a clearly defined critical path and have no more than two open ends.

vi. It shall identify each of the stages for work by each Sub-Contractor.

vii. The sequence and timing of inspections, tests and approvals required for the Work.

viii. In a project with more than one phase, it shall adequately identify each phase (design and construction phases) and its completion date.

ix. The Schedule shall be submitted in both electronic and in hard copy.

x. The Design-Builder shall also submit a report with the Schedule, consisting of a concise written description of the status of the design and status of the construction and/or Work plan.

b) The Owner shall return inadequate Schedules to the Design-Builder with comments within ten (10) days of receipt. The Design-Builder shall resubmit a corrected Schedule within ten (10) days from the date of the Owner's return transmittal.

c) If the actual progress does not conform to the Accepted Schedule, the Owner is entitled to require the Design-Builder to submit to the Owner a revised Schedule showing the order of procedure and periods necessary to ensure completion of the Work by the Contract Time. The revised Schedule will become due within ten (10) days of the request being made by the Owner.

SAMPLE

d) By acceptance of the Schedule, the Owner does not endorse or otherwise certify the validity or accuracy of the activity durations or sequencing of activities. This responsibility remains with the Design-Builder. The Owner will use the accepted Schedule as the baseline against which to measure the progress of the Work.

e) The Design-Builder shall promptly give notice to the Owner of specific probable future events or circumstances which may adversely affect the Work, increase the Contract Price or delay the execution of the Work.

f) No progress payments shall be made or time extensions shall be granted to the Design-Builder without an approved Schedule, updates and/or revised Schedules on record. If the Design-Builder fails to finalize either the initial or a revised Schedule in the time specified, the Owner shall withhold all progress payments until the Schedule is accepted.

g) As a condition precedent to payment of each and every application for payment under the Contract, the Design-Builder shall submit to the Owner for approval, a progress Schedule and a report, in electronic format and hard copy of the status of the design, permitting and construction Work.

4.2.2 Prosecution of the Work. The Design-Builder shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design-Builder within any time period required by the Schedule is less than the amount therein specified, the Design-Builder shall so notify the Owner. If the delay is an Unexcused Delay, the Design-Builder shall prepare a recovery schedule for the Owner's review and approval, showing how the Design-Builder will compensate for the delays and achieve Substantial Completion by the date shown on the Schedule. If the Design-Builder is unable to demonstrate how it will overcome Unexcused Delays, the Owner may order the Design-Builder to employ such extraordinary measures as are necessary to bring the Work into conformity with the Substantial Completion Date set forth therein, the costs of which shall be included as part of the Contract Price.

4.2.3 No Damage for Delay. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Design-Builder for any (1) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to as "Delay") whether or not such Delay is foreseeable, unless the Delay is caused by acts of the Owner constituting active interference with the Design-Builder's performance of the Work, and only to the extent such acts continue after the Design-Builder furnishes the Owner with notice of such interference. In no event shall be the Design-Builder be entitled to any compensation or recovery of any damages, in connection with the Delay, including without limitation, consequential damages, lost opportunity costs, impact damages or other

SAMPLE

similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, ensuring environmental and other compliance by agencies, rescheduling or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with the Design-Builder's performance of the Work.

4.3 Preconstruction Activities

Within thirty (30) Days after execution of this Agreement, the Design-Builder shall submit to the Owner for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design, permitting and construction activities of the Design-Builder, and identify all interface activities of the Owner.

4.4 Critical Path Activities

To the extent the Design-Builder completes activities on the critical path earlier than scheduled, the savings in time on account thereof shall belong solely to the Project.

4.5 Construction Activities

At such time as the Release For Construction Documents are ready, the Design-Builder shall submit to the Owner a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time and the sequence of the construction Work and all significant activities.

4.6 Extensions of Time

4.6.1 General. An extension in the scheduled date of Substantial Completion will only be granted in the event of Excusable Delays affecting Work activities on the critical path.

4.6.2 Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path, such shall constitute an **"Excusable Delay"** (to the extent not set forth below, a delay will be considered an **"Unexcusable Delay"**):

4.6.2.1 Failure or inability of the Owner to make available the Site in accordance with the requirements of the Schedule.

4.6.2.2 Delays resulting from Force Majeure.

SAMPLE

4.6.2.3 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Design-Builder.

4.6.2.7 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

4.6.3 Requirements for Schedule Amendment due to Excusable Delays. In order to obtain an extension of time due to an Excusable Delay, the Design-Builder shall comply with the following requirements:

4.6.3.1 The Design-Builder shall notify the Owner of the Excusable Delay as soon as practicable, but in no event more than four (4) business Days after the Design-Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design-Builder expects to be delayed. After the cessation of the Excusable Delay, the Design-Builder shall notify the Owner of the number of Days the Design-Builder believes that its activities were in fact delayed by the Excusable Delay.

4.6.3.2 Subject to the provisions of Section 4.4, the Design-Builder shall demonstrate to the satisfaction of the Owner that the Excusable Delay in fact delayed the critical path for performance of the Work (by use of CPM analysis).

4.6.4 Decision by Owner. Within thirty (30) Days after cessation of an event giving rise to either an Excusable Delay or Unexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Unexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Unexcused Delays, the Owner will provide the Design-Builder with written notice of its determination of the respective number of Days of Excusable Delay and/or Unexcusable Delay.

4.7 Adjustment in Contract Price on Account of Extensions of Time.

4.7.1 Certain Excusable Delays. Section 4.6 governs the extent to which the Design-Builder is entitled to an extension of time due to Excusable Delays.

4.7.2 Concurrent Delays. To the extent the Design-Builder is entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Design-Builder or by an Unexcusable Delay, the Design-Builder shall not be entitled to any additional costs for the period of such concurrency.

4.8 Liquidated Damages

4.8.1 General. The Design-Builder and the Owner acknowledge that in the event that the Design-Builder fails to achieve Substantial Completion of the Project by the date

SAMPLE

established therefore in the Schedule, as adjusted, the Owner will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the Owner would incur as a result of late Substantial Completion of the Project. The amount of the liquidated damages calculated hereunder does not include any penalty.

4.8.2 Amount of Liquidated Damages. If the Design-Builder fails to achieve Substantial Completion of the Work on or before the date of Substantial Completion set forth in the Schedule, as adjusted, for any reason other than Excusable Delays, the Design-Builder shall pay to the Owner liquidated damages in the amount of One Thousand Dollars ($1,000.00) per Day for each Day the date of Substantial Completion is delayed beyond the date of Substantial Completion set forth in the Schedule. Likewise, if the Design-Builder fails to achieve Final Completion of the Work on or before the date of Final Completion set forth in the Schedule, as adjusted, for any reason other than Excusable Delays, the Design-Builder shall pay to the Owner liquidated damages in the amount of Five Hundred Dollars ($500.00) per Day for each Day the date of Final Completion is delayed beyond the date of Final Completion set forth in the Schedule. Payment of liquidated damages shall be made contemporaneously with the Owner's required payment to the Design-Builder and such payments may be offset against each other.

ARTICLE 5
PAYMENT AND COMPLETION

5.1 Contract Price; Credits/Savings

The Owner shall pay the Design-Builder in current funds for the Design-Builder's performance of this Agreement the Contract Price subject to any Credits/Savings approved by the Owner and subject to the provisions under this Agreement.

5.2 Schedule of Values

Before the first Application for Payment, the Design-Builder shall submit to the Owner, a schedule of values, setting forth the various portions of the Work, and the portions of the Contract Price allocated to each portion. This schedule of values shall be used as a basis for payment. Those portions of the schedule of values allocable to Work performed by Design-Builder shall be depicted on the Schedule.

5.3 Applications for Payment

The Design-Builder shall deliver to the Owner on the last business Day of each month an Application for Payment covering the Cost of Work applicable to the Work performed during such month. With each Application for Payment the Design-Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Contract Price during such month and the percentage of completion of each category of Work.

SAMPLE

5.4 Amount of Progress Payments

The Owner shall pay the Design-Builder the actual Contract Price (including payment for off-site stored materials) through the period covered by the Application for Payment, less Retainage as set forth in Section 5.5 below, provided that the payment amount before retainage will not exceed the percentage of completion of the Work multiplied by the Contract Price all as set forth in the schedule of values.

5.5 Retainage

5.5.1 With respect premiums for bonds and insurance, Retainage shall be withheld.

5.5.2 With respect to Design and Construction Work, 10% Retainage shall be withheld on the Work. Half of the Retainage on account of the Work shall be released upon Substantial Completion of the Work subject to the Contract. All Retainage shall be fully released at the end of the Warranty Period subject to the Contract.

5.6 Payment for On-Site and Off-Site Stored Materials

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design-Builder furnishing evidence to the Owner that (a) title to the materials and equipment will pass to the Owner upon payment therefor; (b) the materials and equipment are adequately insured; and (c) such other matters as the Owner may reasonably request in order to protect its interests.

5.7 Title to Construction Work

The Design-Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder as evident by a signed Affidavit of Payment from the Design-Builder and as a condition precedent to any subsequent Payment by the Owner.

5.8 Withholding of Payment

The Owner may withhold payment on account of an Application for Payment to the extent necessary to protect the Owner from loss because of:

5.8.1 defective Work not remedied;

SAMPLE

5.8.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

5.8.3 failure of the Design-Builder to make payments of undisputed amounts to Subcontractors for labor, materials or equipment;

5.8.4 damage to the Owner or a Separate Contractor caused by the fault or neglect of the Design-Builder to the extent not covered by insurance; or

5.8.5 reasonable evidence that the Work will not be Substantially Completed within the Contract Time due to Unexcusable Delay, and that the unpaid balance of the Contract Price would not be adequate to cover liquidated damages for the anticipated Unexcused Delay.

5.8.6 failure to provide a sworn Affidavit certifying that all Subconsultants, Subcontractors, Suppliers and Vendors having an interest in the Contract were paid for satisfactory performance and that Retainage is returned. The Owner will honor an exception to the foregoing when the Design-Builder demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Owner and the affected Subconsultants, Subcontractors, Suppliers and Vendors.

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld.

5.9 Substantial Completion

When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of Punch list items. The Design-Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents. Upon receipt of the Punch list, the Owner will make an inspection to determine whether Substantial Completion has occurred. The Certificate of Substantial Completion shall state the date of Substantial Completion and shall be executed by the Owner and the Design-Builder. If the Owner and the Design-Builder cannot agree as to the appropriate date of Substantial Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design-Builder shall diligently proceed with completion of the Punch list items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion or designated portion thereof unless otherwise provided in the Contract Documents.

5.10 Partial Occupancy or Use

The Owner may occupy or use any completed or partially completed portion of the

SAMPLE

Construction Work at any stage provided such occupancy or use is authorized by public authorities having jurisdiction over the Construction Work. Immediately prior to such prior occupancy, the Owner and the Design-Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.11 Final Completion and Final Payment

5.11.1 Final Completion. When the Design-Builder considers that the Work is Finally Complete, the Design-Builder shall so notify the Owner. The Certificate of Final Completion shall set forth the date of Final Completion and shall be executed by the Owner and the Design-Builder. If the Owner and the Design-Builder cannot agree as to the appropriate date of Final Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.11.2 Conditions Precedent to Final Payment. Neither final payment nor any final release of Retainage shall become due until the Design-Builder submits to the Owner:

5.11.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied;

5.11.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner;

5.11.2.3 consent of Surety to final payment; and

5.11.2.4 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Subconsultant and/or Subcontractor, Supplier, or Vendor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien.

5.11.4 Waiver of Claims at Final Payment

5.11.4.1 Acceptance of final payment by the Design-Builder shall constitute a waiver of affirmative claims by the Design-Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.11.4.2 The making of final payment by the Owner shall constitute a waiver of claims by the Owner, except those arising from (a) liens, claims, security interests

SAMPLE

and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents.

5.12 Allowances

The Design-Builder shall include in the Contract Price any and all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities against which the Design-Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.12.1 materials and equipment under an allowance shall be selected by the Owner to avoid delay in the Work, provided that the Owner shall be given no less time than provided in Exhibit J;

5.12.2 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

5.12.3 allowances shall cover Design-Builder's costs for unloading and handling at the site labor, installation costs and other expenses;

5.12.4 whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order in accordance with the provisions of Section 6.5. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Sections 5.12.2 and 5.12.3.

5.13 Superintendent

The Design-Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Construction Work. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.14 Documents and Samples at the Site

The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design-Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Owner upon completion of the Work.

5.15 Contingency

SAMPLE

The Design-Builder and the Owner acknowledge that there is no line item for "Contingency" under this Contract.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and subject to the provisions of Section 6.2 hereof, the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, there shall be no adjustments in the unit prices for changes to the quantities.

6.2 Change Directives

The following procedures shall apply with respect to Change Directives:

6.2.1 Upon receipt of a Change Directive signed by the Owner, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Price or the Schedule. If the Design-Builder receives a written communication signed by the Owner which the Design-Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Owner a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Price or Schedule, the Design-Builder shall keep and present, in such form as the Owner may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Amounts not in dispute shall be included in Applications for Payment. The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change which results in a net decrease in the Contract Price shall also be included in Applications for Payment.

6.2.5 If the Owner and the Design-Builder do not agree with the adjustment in the Schedule or the Contract Price, such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

SAMPLE

6.3 Change Proposals

If the Owner requests the Design-Builder to submit a Change Proposal which would entitle the Design-Builder to an increase or decrease in the Contract Price, the costs of preparation of such Change Proposal shall be included in the Contract Price.

6.4 Claims

In addition to submitting Change Proposals in response to the request of the Owner, the Design-Builder may submit one or more claims for any requested adjustment in the Contract Price and/or Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design-Builder shall give the Owner written notice within four (4) Business Days after it becomes aware of the event giving rise to the Claim. Failure to give any notice required by this Article 6 shall be deemed a complete and final waiver of the right of the Design-Builder to recover.

6.5 Change Orders Increasing or Decreasing Scope

6.5.1 Increased Scope. With respect to Change Orders which increase the Scope of Work described on Exhibit O, are not due to the errors or omissions of the Design-Builder and are not attributable to Excusable Delays or the contingencies set forth in Section 6.6 below, the Contract Price shall be increased or decreased by the following **"Scope Change Costs"**:

6.5.1.1 Construction Work

6.5.1.1.1 The estimated increase in the Contract Price attributable to the Change Order and which would not have been incurred but for the Change Order.

6.5.1.1.2 Mark up on any and all Design and Construction Work shall be ten percent (10%) on actual direct cost of labor and burden, material and actual cost of supplies accepted and used on the Project. There shall be no payment for standby and/or idle equipment. Such mark up will be allowed only on first tiers subconsultant and/or subcontractor.

6.5.1.2 Design Work. Actual salaries (not including the cost of mandatory and customary contributions and benefits) of all of the design engaged on the Project (except for principals, associate principals, associates and other personnel assigned to the Project including general office employees such as accountants or general secretaries performing nontechnical or nonprofessional functions) times a multiplier of 1.5 shall only be due in the event the Change Order contemplates additional Design Work which (A) involves a material change to the scope of the Design Work requiring redesign of one or more systems which have been designed and approved or (B) contemplates additional Design Work which is not consistent with or reasonably inferable from the type of Design Work contemplated by Exhibit O (e.g., Design Work on account of additional facilities or Design Work originally

SAMPLE

intended to be performed by others).

6.5.2 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit O, the Contract Price shall be decreased by the Cost of Work attributable to such Change Order. If the Change Order deletes a major part of the scope of Work, the Owner and the Design-Builder agree an appropriate reduction, taking into account the Design-Builder's administrative costs in connection with such Change Order is not to exceed ten percent (10%) of the construction costs of the deleted.

6.6 Design Change Orders

In the event the Owner revokes, modifies or otherwise changes its approval of a given system after such system has been designed and approved, the Design-Builder shall be entitled to an increase on account of the Design Work equal to the Additional Services Fee.

6.7 Time Extensions on Account of Change Orders

The Design-Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order. Subject to the provisions of Section 4.4 hereof, the Design-Builder shall present to the Owner a CPM analysis showing how the Change Order affects the critical path of the Work.

ARTICLE 7
CORRECTION OF WORK

7.1 Correction of Work Prior to Completion

Prior to the date of Substantial Completion, the Design-Builder shall correct Work (including any Design Materials, items of Construction Work, or any other part of the Work) which (a) the Owner reasonably rejects as being defective or nonconforming to the requirements of the Contract Documents in a written notice delivered to the Design-Builder or (b) the Design-Builder recognizes is defective or nonconforming to the Contract Documents. If other portions of the Work are adversely affected by or are damaged by such defective Work, the Design-Builder shall also correct, repair or replace such affected or damaged Work, as well as any other property of the Owner or others damaged by such defective or nonconforming Work. Prior to the date of Final Completion, the cost of correcting any damaged or defective Work shall be included as part of the Contract Price.

7.2 Correction of Work After Completion

For Defects identified by the Owner and for which the Owner has notified the Design-Builder within a period of two years (24) months after the date of Substantial Completion, or within such longer period as may be provided by special warranties contained in the Contract Documents, the Design-Builder shall re-execute, correct, repair or replace all Work found to be defective or nonconforming to the Contract Documents (whether arising from a design or construction defect, error, omission or deficiency). If other portions of the

SAMPLE

Work adversely affected by or damaged by such defective Work, the Design-Builder shall also correct, repair or replace such affected or damaged Work, as well as any other property of the Owner or others damaged by such defective or nonconforming Work.

7.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

7.4 No Effect on Limitations

Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Owner may have under the Contract Documents.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design-Builder

The Design-Builder shall provide the insurance required of it by the provisions of the Contract, the cost of which shall be included in the Contract Price.

9.2 Insurance to be Provided by the Owner

The Owner shall provide the insurance required of it by the provisions of the Contract, the cost of which shall be included in the Contract Price.

9.3 Payment and Performance Bonds

The Contractor shall furnish and deliver to the Owner the Payment and Performance Bonds to the Design-Builder and the Owner prior to, and as a condition precedent to, commencement of the Construction Work on the Site. The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design-Builder and the Owner as dual obligees, and shall be in the penal sum equal to _____ Dollars ($_____). The Performance Bond shall further provide that the Owner shall have preference over the Design-Builder with respect to the proceeds of such Bond. The Payment and Performance Bonds shall be in the forms set forth as Exhibit M hereto, and shall be issued by the Surety. All premiums for the Payment and Performance Bonds shall be included in the Contract Price.

9.4 Indemnification

To the fullest extent permitted by law, the Design-Builder shall indemnify and hold

SAMPLE

harmless the Indemnified Parties from and against all claims, damages, losses and expenses arising out of or resulting from performance of the Work, provided that (a) with respect to claims concerning the Design Work, such claims arise out of the professional errors or omissions; and (b) with respect to claims concerning the Construction Work, such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom; and (c) indemnification shall apply to the negligent acts or omissions of the Design-Builder, its Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by an Indemnified Party. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Subparagraph. Such indemnification shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, a Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 Site Safety. The Design-Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design-Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property

10.2.1 Reasonable Precautions. The Design-Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design-Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

SAMPLE

10.2.2 Safeguards. The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection (perimeter fencing), including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities, and shall comply fully with the requirements of OSHA.

10.2.3 Use of Explosives. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Construction Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.4 Remedy of Damage. The Design-Builder shall promptly remedy damage and loss to property caused in whole or in part by the Design-Builder or anyone directly employed by or in control of Design-Builder and for whose acts Design-Builder may be liable and for which the Design-Builder is responsible. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's other obligations. All costs incurred by the Design-Builder in connection with its obligations under this Section shall be included in the Contract Price.

10.2.5 Designation of Safety Coordinator. The Design-Builder shall designate or cause to be designated a responsible member of its organization at the Site whose full-time duty shall be the prevention of accidents.

10.2.6 Loads. The Design-Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger its safety.

10.3 Security

The Design-Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design-Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design-Builder shall take all precautions and measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site

The Design-Builder shall be responsible for any and all damage or loss to property at the Site. The costs and expenses incurred by the Design-Builder under this Article shall be included in the Contract Price.

10.5 Damage to Property of Others

SAMPLE

The Design-Builder shall avoid damage, as a result of the Design-Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Owner. The Design-Builder shall repair any such damage caused by the operations of the Design-Builder, which costs shall be included in the Contract Price.

10.6 Failure of Design-Builder to Repair Damage

If the Design-Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Owner, after ten (10) Days prior written notice to the Design-Builder (provided the Design-Builder has not commenced such repair during such ten (10) Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design-Builder amounts paid or incurred by the Owner is correcting such damage.

10.7 Emergencies

If an emergency affecting the safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional costs or extensions of time claimed by the Design-Builder on account of an emergency not caused by the fault or neglect of the Design-Builder shall be determined as provided under the Contract.

ARTICLE 11
DISPUTES

11.1 Disputes between Owner and Design-Builder

In the event of any dispute arising between the Owner and the Design-Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures

11.2.1 Initial Meeting to Resolve Disputes. Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Owner's offices within three (3) working Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Owner's Authorized Representative, the Design-Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

SAMPLE

11.2.2 Mediation

11.2.2.1 If the dispute has not been resolved within five (5) working Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) working Days after his/her appointment, which meeting shall be attended by the Owner's Authorized Representative, the Design-Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) working Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of One Million Dollars ($1,000,000) then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date of this Agreement. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

SAMPLE

12.1 Design-Builder Events of Default

The following shall be considered "Design-Builder Events of Default":

12.1.1 if the Design-Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after seven (7) Days notice from the Owner, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design-Builder materially breaches this Agreement and fails, after seven (7) Days notice from the Owner, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Subconsultants, and Subcontractors for materials or labor in accordance with the respective agreements between the Design-Builder and the Subcontractors or persistent disregard of Applicable Laws)

12.1.3 if a custodian, trustee or receiver is appointed for the Design-Builder, or if the Design-Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design-Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design-Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design-Builder, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.2 Remedies of the Owner upon a Design-Builder Event of Default

12.2.1 Termination of Agreement. Upon the occurrence of a Design-Builder Event of Default, the Owner shall have the right to terminate this Agreement upon an additional seven (7) Days written notice to the Design-Builder, provided that the Design-Builder has not commenced a cure within such seven (7) Day period. Without prejudice to any other rights or remedies of the Owner, the Owner, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design-Builder;

12.2.1.2 accept assignment of the Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Owner may deem expedient.

When the Owner terminates the Agreement, the Design-Builder shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract

Price exceeds costs incurred in finishing the Work, such excess shall be paid to the Design-Builder, up to the amount due the Design-Builder to date. If such costs exceed the unpaid balance of the Contract Price, the Design-Builder shall pay the difference to the Owner.

12.2.2 Recourse to Payment and Performance Bonds. Upon the occurrence of a Design-Builder Event of Default and termination of this Agreement by the Owner, the Owner may call upon the Surety to perform its/their obligations under the Payment and Performance Bonds, if applicable.

12.3 Owner Events of Default

The following shall be considered "Owner Events of Default":

12.3.1 if the Work is stopped for a period of one hundred eighty (180) Days through no act or fault of the Design-Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if a custodian, trustee or receiver is appointed for the Owner, or if the Owner becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Owner causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Owner, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Owner, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design-Builder upon an Owner Event of Default

If an Owner Event of Default exists and is continuing, the Design-Builder may, upon seven (7) Days additional written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and services rendered.

12.5 Remedies not Exclusive

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute.

SAMPLE

12.6 Termination or Suspension for Convenience

12.6.1 Termination for Convenience. The Owner may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Owner to the Design-Builder for the Owner's convenience. In such case, the Owner shall pay to the Design-Builder all funds due the Design-Builder for Work performed up to the date of termination, plus all demobilization and close-out costs.

12.6.2 Suspension for Convenience. The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. An adjustment shall be made for increases in the cost of performance of the Work caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible or (2) that an equitable adjustment to the Contract Price and/or Schedule is made or denied under another provision of this Agreement.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law and Venue

This Agreement shall be governed by the laws of Florida. Venue shall remain in Miami-Dade County, Florida.

13.2 Successors and Assigns

The Owner and the Design-Builder respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other Party hereto and to shareholders, successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither Party shall assign the Agreement as a whole without the written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under the Agreement and the Contract Documents.

13.3 Written Notice

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the day after deposit if delivery by overnight courier, or two (2) Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

SAMPLE

If to the Owner:

with a copy to:

If to the Design-Builder:

with a copy to:

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deem to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or the Owner, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Final Completion of the Work.

13.5 Community Benefits Plan

The Design-Builder shall comply with the provisions of Exhibit N hereto with respect to utilization of the agreed to "Community Benefit Plan exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the City Code of Ordinances.

13.6 Modifications

No Modifications or Change Orders shall be valid unless in writing and signed by the Owner and the Design-Builder or their respective permitted successors and assigns.

13.7 Interpretation

SAMPLE

Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.8 Severability

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

13.9 Whole Agreement

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

13.10 Accounting Records

The 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 reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Design-Builder's records, books, correspondence, instructions, drawings, receipts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

SAMPLE

Corporate Secretary or Witness:

By: _____

Print Name: _____

Date: _____

"Design-Builder ":

By: _____

Print Name: _____

Date: _____

ATTEST:

By: _____
Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation: "**City**"

By: _____
Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney

SAMPLE

LIST OF EXHIBITS

Exhibit A	**Schedule of Payments**
Exhibit B	**Construction Allowance Items**
Exhibit C	**List of Contract Documents**
Exhibit D	**Contract Price**
Exhibit E	**Contract Price Breakdown**
Exhibit F	**Governmental/Agency Approvals**
Exhibit G	**Contaminated Materials or Contamination**
Exhibit H	**Schedule**
Exhibit I	**Site Description**
Exhibit J	**Procedures for Review of Design Materials**
Exhibit K	**Designation of Authorized Representatives**
Exhibit L	**Insurance Requirements**
Exhibit M	**Payment and Performance Bond Forms**
Exhibit N	**Community Benefits Plan**
Exhibit O	**Scope of Work**
Exhibit P	**Left Blank Intentionally**

SAMPLE

EXHIBIT A
SCHEDULE OF FEE PAYMENTS

SAMPLE

EXHIBIT B
CONSTRUCTION ALLOWANCE ITEMS

SAMPLE

EXHIBIT C
LIST OF CONTRACT DOCUMENTS

SAMPLE

EXHIBIT D
CONTRACT PRICE

1. "Contract Price". The term "Contract Price" shall mean costs incurred by the Design-Builder in the performance of the Work. The following are categories of cost and expense to be paid by the Owner to the Design-Builder as Contract Price:

SAMPLE

EXHIBIT E
CONTRACT PRICE BREAKDOWN

1. Contract Price. The **Contract Price Breakdown** as of the date of execution of the Agreement is comprised of the following.

Contract Price: **$_____**

Design: **$_____**
Construction: **$_____**

SAMPLE

EXHIBIT F
GOVERNMENTAL/AGENCY APPROVALS

SAMPLE

EXHIBIT G
HAZARDOUS MATERIALS

1. Certain Definitions

1.1 "Hazardous Materials" means any substance:

1.1.1 the presence of which requires investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

1.1.2 which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act. 42 U.S.C. §§ 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 et seq. ("RCRA");

1.1.3 which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

1.1.4 which toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or the District of Columbia;

1.1.5 the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site, or

1.1.6 the presence of which on adjacent properties could constitute a trespass by the Design-Builder or the Owner.

1.2 "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. § 6991, and also shall include:

1.2.1 any tank of 1,100 gallons or less capacity used for storing motor fuel;

1.2.2 any tank used for storing heating oil for consumption on the premises where stored;

1.2.3 any septic tank; and

1.2.4 any pipes connected to items 1.2.1-1.2.3.

1.3 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all

SAMPLE

governmental agencies or other instrumentalities of the United States or the District of Columbia and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1.3.1 all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

1.3.2 all requirements pertaining to the protection of the health and safety of employees or the public.

1.4 "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney's fees, which are incurred at any time as a result of the existence of Hazardous Materials upon, about or beneath the Site or migrating or threatening to migrate to or from the Site, and including, without limitation;

1.4.1 damages for personal injury, or injury to property or to natural resources occurring upon or off the Site;

1.4.2 fees incurred for the services of attorneys, consultants, the Design-Builder, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements; and

1.4.3 liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in subparagraph 1.42.

1.5 "Environmental Conditions" means collectively, Hazardous Materials and Underground Storage Tanks.

2. Investigation of Site

2.1 Upon written notice from the Owner, the Design-Builder shall prepare for execution by the Owner, one or more contracts ("Environmental Contracts") with suitably qualified consultants and/or engineers ("Environmental Engineers"), each of which Environmental Engineer and which form of Environmental Contract shall be subject to the approval of the Owner, for purposes of performing an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation approved by the Owner, and may provide for conducting the investigation and testing in phases acceptable to the Owner.

SAMPLE

The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Site as soon as the Owner is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that the Design-Builder, acting as agent of the Owner, shall coordinate the activities of the Environmental Engineers.

2.2 The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup or remediation of such Environmental Conditions (i) which are required by Environmental Requirements, or (ii) which are reasonably necessary to mitigate Environmental Damages.

2.3 The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide the Owner and the Design-Builder with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. The Design-Builder shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to the Owner a written report setting forth the Design-Builder's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Schedule and the progress of the Work.

2.4 The Environmental Contracts shall provide that it shall be the responsibility of the Environmental Engineers to give any necessary notice to the Federal District or other agencies of the presence of any Environmental Conditions; to pursue all necessary negotiations with Federal and District agencies concerning preparation and approval of a plan for clean-up to the extent required; and to obtain all necessary permits to perform any Remedial Actions.

3. Remedial Actions

3.1 If so instructed by the Owner, based upon the results of the Environmental Assessments, the Design-Builder shall, as agent for the owner, obtain bids from remediation contractors ("Remediation Contractors") suitably qualified and approved by the Owner, to perform the Remedial Actions selected by the Owner and shall submit such bids to the Owner, together with the Design-Builder's recommendation of the Remediation Contractor(s) who should be retained. If the Owner elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, the Owner will so advise the Design-Builder in a written notice on or before the date which is sixty (60) Days after receipt of the foregoing matters from the Design-Builder. Promptly after receipt of such notice, the Design-Builder shall prepare for the Owner's execution remediation contracts ("Remediation Contracts") with the Remediation Contractors identified in such notice.

SAMPLE

3.2 The Design-Builder, as agent for the Owner, shall be responsible for coordinating the work and services performed by the Remediation Contractors, and coordinating such work with the Work.

3.3 If in the course of performance of the Work, the Design-Builder encounters on the Site any Hazardous Materials not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Design-Builder shall immediately suspend the Work in the area affected and promptly thereafter report the condition to the Owner.

4. Payments: Liability of Design-Builder

4.1 All payments due under the Environmental Contracts and the Remediation Contractors shall be made by the Owner directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by the Design-Builder prior to submission to the Owner.

4.2 All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the CONTRACT PRICE, and shall be the sole responsibility of the Owner, except as expressly provided otherwise in Section 5 hereof.

4.3 It is understood and agreed that with respect to any Environmental Conditions existing on the Site, the Design-Builder is not, and shall not be deemed to be, a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that the Design-Builder shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

4.4 The Owner shall indemnify, defend and hold harmless the Design-Builder, the Team Subcontractors, the Subcontractors, and the directors, officers, agents and employees of each (the "Design-Builder Indemnitees"), from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Design-Builder Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

5. Environmental Responsibilities of the Design-Builder

5.1 The Owner acknowledges and agrees that the Design-Builder shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor and any required approvals of any applicable government agencies. The Design-Builder agrees to use good faith diligent efforts to adjust and reschedule its activities

SAMPLE

at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

5.2 The Design-Builder shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Design-Builder shall comply, and shall cause the Team Subcontractors and Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

5.3 The Design-Builder shall indemnify, defend and hold harmless the Indemnified Parties from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Design-Builder, the Team Subcontractors or the Subcontractors, of any Environmental Requirements arising out of the performance of the Work.

SAMPLE

EXHIBIT I
SITE DESCRIPTION

SAMPLE

EXHIBIT J
PROCEDURES FOR REVIEW OF DESIGN MATERIALS

SAMPLE

EXHIBIT K
DESIGNATION OF AUTHORIZED REPRESENTATIVES

SAMPLE

EXHIBIT L
INSURANCE REQUIREMENTS

SAMPLE

EXHIBIT M
PAYMENT AND PERFORMANCE BOND FORMS

SAMPLE

EXHIBIT N
WBE/MBE AND AFFIRMATIVE ACTION GOALS

SAMPLE

EXHIBIT O
SCOPE OF WORK

SAMPLE

EXHIBIT P
LEFT BLANK INTENTIONALLY

SAMPLE