



DESIGN-BUILD AGREEMENT

STA Office Building

June 12, 2019

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**SOLANO TRANSPORTATION AUTHORITY
OFFICE BUILDING, SUISUN CITY, CA**

DESIGN / BUILD AGREEMENT

THIS DESIGN BUILD AGREEMENT is entered on June 12, 2019, between the SOLANO TRANSPORTATION AUTHORITY ("STA"), a joint powers authority formed under the laws of the State of California and _____ ("Design/Builder"), a _____ corporation.

RECITALS

- A. The STA desires to construct a new building of two (2) story office building with rooftop conference room of approximately 23,000 gross square feet; new city sidewalks and lighting, landscape, hardscape elements located at 419 Main Street in Suisun City, California ("the Project").
- B. The STA issued a Pre-Qualification Questionnaire for Prospective Design-Build Entities on _____. A Mandatory Pre-Qualification Briefing Conference was held on _____. Responses were due at the STA's offices on _____ at _:00 PM PST.
- C. The STA selected the three (3) highest ranked teams. The three (3) finalists were notified on _____.
- D. The STA issued a Request for Proposal to the pre-qualified teams on March 28, 2019 with instructions to submit their proposal to STA by May 17, 2019.
- E. The STA issued Addenda to the Requests for Proposals as follows, which by this reference, are incorporated into this Agreement.

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

- F. Final selection interviews were held on may 30, 2019.
- G. Notification of final selection was made on _____.
- H. The Design/Builder is _____, a New York Corporation. The Design/Builder has entered into a design contract with KMD Architects pursuant to which the Architect of Record agreed to perform certain design services required by this Agreement.

- I. The documents included in the STA's Request for Proposal dated _____, the Bridging Documents dated _____, the Design-Builder's Pre-Qualification Questionnaire submitted on _____, the Design/Builder's Technical Proposal dated _____, and the Design/Builder's permitted set of documents, once approved, all of which are incorporated in this Agreement, designated as the Contract Documents, are provided by and to the STA to establish the scope, level of quality and design intent, and the reporting procedures for the development and construction of the entire project.

The Design/Builder shall not provide any exceptions to the Design Builder's Proposed Bid Amount, the Project Milestone Schedule, the program statement, the Bridging Documents, or any other requirement described in the contract requirements. Despite incorporating the Design/Builder's Statement of Qualifications and RFP Proposal as part of this Design Build Agreement, the STA does not accept any provision of the Proposal that is not in conformance with the criteria of the Request for Proposal.

- J. It is the intent of this Design Build Agreement that the Design/Builder assumes full responsibility for administering, managing, designing, constructing and commissioning the Project.
- K. The STA and Design/Builder wish to memorialize the intent of the parties and the terms upon which Design/Builder will undertake the Project.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 – DEFINITIONS

- 1.0 Definitions. The definitions below shall have the same meaning throughout all of the Contract Documents.
- 1.1 Act of God: an unforeseeable inevitable event caused by natural forces over which the Design/Builder has little or no control; e.g., windstorms, floods, earthquakes, riots, fires, and lightning strikes.
- 1.2 Agreement (Design Build Agreement): this Design Build Agreement and all subsequent amendments and/or modifications to it. Where the term "Agreement," or "Contract," is used in the documents, these terms shall refer to this "Design Build Agreement".
- 1.3 Applicable Laws: all laws, codes, ordinances, rules and regulations of governmental authorities affecting the Site and the Work.
- 1.4 Architect of Record: _____, licensed in the State of California and employed or contracted by the Design/Builder to design and prepare construction documents for the project and to provide construction phase services during the Project.
- 1.5 Authorized Representatives: see Article 4, Paragraph 4.1, STA's Representative.
- 1.6 Beneficial Occupancy: STA's occupancy or use of any completed or partially completed portion of the Work. See Article 6, Subparagraph 6.11.3, Beneficial Occupancy.

- 1.7 Bridging Documents: documents prepared by the Master Architect, which set forth the scope of the project. The Bridging Documents include the Design Criteria, Specifications, and Drawings.
- 1.8 CEQA: the California Environmental Quality Act, located at Public Resources Code Section 21000 et seq.
- 1.9 Certificate of Compliance: a certificate issued by the City of Suisun City Fire Department stating that the installation of all life safety materials and equipment complies with building and life safety codes. Such equipment includes, but is not limited to: Fire Alarm and Fire Sprinklers, rated construction assemblies, fire exits, paths of egress, etc.
- 1.10 Certificate of Final Completion: a certificate prepared by the Design/Builder and forwarded to the STA stating that the Design/Builder believes in good faith that the Project is complete, including all punch list items, close-out activities and commissioning, and that the Design/Builder is entitled to Subparagraph 6.11.7, Final Payment, in accordance with the provisions of Subparagraph 6.11.5, Final Completion.
- 1.11 Certificate of Occupancy: a formal document issued by the City of Suisun City granting occupancy to the building(s) or area(s) within the building(s).
- 1.12 Change Order: a change to the Design Build Agreement and/or Contract Documents signed by the Design/Builder and the STA authorizing a change in the Work, which may also adjust the Contract Price and/or the Contract Time, Paragraph 6.1. Contract Price and/or Contract Time may be changed only by Change Order.
- 1.13 Change Proposal: a proposal for a Change Order, submitted to the Design/Builder by the STA, or submitted to the STA by the Design/Builder on the Design/Builder's own initiative.
- 1.14 Commissioning: a quality process for achieving, validating and documenting that the new facility and its systems are planned, designed, installed, tested and capable of being operable and maintained to perform in conformity with the Bridging documents.
- 1.15 Construction Documents: the drawings and specifications prepared and sealed by the Architect of Record on behalf of the Design/Builder for construction of the Project.
- 1.16 Construction Project Manager: _____ serves as a point of contact in coordinating the STA's interests.
- 1.17 Contract Amount: the amount agreed to between the STA and the Design-Builder as total compensation to the Design/Builder for the design and construction of the Project.
- 1.18 Contract Documents: those documents set forth in Exhibit B, Contract Documents, all of which, together with this Design Build Agreement, form the entire agreement between the STA and the Design/Builder. Any amendments and modifications to the Contract Documents must be approved by the STA prior to incorporation into this Design Build Agreement.

- 1.19 Contract Time: see Paragraph 7.1, Contract Time.
- 1.20 Criteria Documents: the Design Requirements, Specifications, and the Drawings prepared by the Master Architect and incorporated by reference into the Agreement.
- 1.21 Day(s): calendar day or days, unless otherwise specifically designated as a business day. If a day requiring notice or action falls on a weekend or national or state holiday, then the next non-weekend or non-holiday shall be applicable. (Business day(s) are days other than weekend days or national or state holidays.)
- 1.22 Design/Builder: _____, a _____ corporation (CA License No. _____ – Classification B) able to provide appropriately licensed construction contracting, and professional architectural and engineering services required hereunder.
- 1.23 Final Acceptance and/or Final Completion: the terms to be used interchangeably for the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents.
- 1.24 Float: the amount of time difference between the Design/Builder's scheduled critical path method (CPM) early completion date and the Final Completion date as shown in the Project Milestone Schedule, Exhibit A.
- 1.25 Indemnified Parties: the STA and its officers, elective and appointive Board, employees, attorneys, consultants, agents, subcontractors, successors and assigns.
- 1.26 Liquidated Damages: the damages limited to failure to complete the Project on time and payable by the Design/Builder to the STA in the event the Design/Builder does not achieve the Certificates of Final Completion for the Project as required in the Project Milestone Schedule (Exhibit A), or as adjusted by contract change order, as more fully described in Paragraph 7.7, Liquidated Damages.
- 1.27 Master Architect: the architect (Lionakis) retained by the STA to develop the Bridging Documents and define functional and aesthetic characteristics thus establishing the design intent.
- 1.28 Notice to Proceed: the notice given by the STA to the Design/Builder stating that the Design/Builder is authorized to begin the design and/or the construction of the Project.
- 1.29 Substantial Completion: a point in time when the work is sufficiently complete in accordance with the construction documents so that it can be used for its intended purpose, as evidenced by the issuance of a Temporary Certificate of Occupancy.
- 1.30 Work: all labor, materials, tools, equipment, and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Article 3, Design/Builder's Duties and Responsibilities.
- 1.31 Unforeseen Conditions: either 1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents, or 2) unknown physical conditions at the site of an unusual nature, which differ materially from those

normally encountered and generally recognized as inherent in the work of the character provided for in this Agreement.

ARTICLE 2 – GENERAL PROVISIONS

2.1 Scope of Work.

2.1.1 The Design/Builder shall be responsible for the performance of all design and construction services, and provide all materials, labor, tools, and equipment necessary to complete the work described in and reasonably inferable from the Contract Documents.

2.2 Execution, Correlation and Intent:

2.2.1 The Agreement will not be binding on the STA until executed by the STA's legal representative.

2.2.2 Execution of the Agreement by Design/Builder is a representation that the Design/Builder understands and accepts the methodology under which the work is to be performed and has correlated personal observations with requirements of the Contract Documents.

2.2.3 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the work by 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 to the extent consistent with and reasonably inferable from the Contract Documents.

2.2.4 Organization of the Contract Documents and arrangement of the drawings is not intended to control or guide the division or extent of work.

2.2.5 Unless otherwise stated in the Contract Documents, words and phrases shall be interpreted consistent with construction and design industry standards.

2.2.6 Work shall be accomplished in a workmanship-like manner by workers, laborers, or mechanics qualified to perform in the class of work required. Any persons the STA may deem incompetent or disorderly shall be promptly removed from the Project by the Design/Builder upon written notice from the STA and shall not be reemployed for the duration of the project.

2.2.7 As a minimum, work shall comply with applicable laws, codes and ordinances to the standards and quality set forth in the Criteria and Contract Documents.

2.3 Use of the STA's Contract Documents.

2.3.1 The Contract Documents issued by the STA are for use solely with respect to this Project. They are not to be used on other projects, or for additions to this Project without the specific written consent of the STA. The Design/Builder is granted

limited license to use and reproduce applicable portions of the Contract Documents for use in the execution of the Work. Design/Builder shall not release any information to the public in connection with services performed under this Agreement without advance written permission of the STA.

2.4 Conflicts in the Contract Documents.

2.4.1 The Contract Documents are intended to be complementary and interpreted in harmony to avoid conflict. In the event of conflict in the Contract Documents, the precedence shall be as follows:

- .1 Addenda shall govern over other sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.
 - .2 The Agreement shall govern over other Contract Documents except for specific modifications stated in amendments to the Agreement and Addenda.
 - .3 In case of conflict between the drawings and the written design guidelines and the specifications, the Design/Builder shall obtain written clarification from the STA as to the governing document. Such request for Clarification shall be submitted on the Request for Clarification (RFC) form provided by the Construction Project Manager.
 - .4 In the case of conflict within the Design/Builder's Designed and Permitted set of drawings, the following shall govern:
 - .1 Schedules, when identified as such, shall govern over all other portions of the drawings.
 - .2 Specific notes shall govern over all other notes and all other portions of the drawings, except schedules described in the preceding sub clause.
 - .3 Larger scale drawings shall govern over smaller scale drawings.
 - .4 Figured or numerical dimensions shall govern over dimensions obtained by scaling.
 - .5 In the case of other conflict within the drawings, the Design/Builder shall obtain written clarification from the STA as to the governing document.
- 2.4.2 The STA and Design/Builder acknowledge that the Contract Documents may differ in some respects from other documents included in the Design/Builder's Technical Proposal upon which Design/Builder based its proposal. The STA and Design/Builder agree that the Design/Builder's Designed and Permitted documents, once approved by Solano STA, shall supersede all previous documents, unless otherwise modified by Change Order as provided by this Agreement.

2.5 Clarifications and Additional Instructions.

- 2.5.1 Conflicts, omissions, errors, interpretation or clarification, insufficiency of detail or explanation in the Contract Documents relative to the timely or material execution of the work shall be immediately brought to the attention of the STA in writing and request interpretation, clarification, or furnishing of additional detailed instructions. Such questions shall be resolved and instructions to the Design/Builder issued within a reasonable time with the intent as to not delay the progress of the work by the STA, whose decision shall be final and conclusive. Should the Design/Builder proceed with the work before receipt of instructions from the STA, the Design/Builder shall adjust conform to the STA's instructions. Design/Builder shall be solely responsible for any resultant damage, defect or added cost.
- 2.5.2 The STA may furnish additional detailed written instructions to explain the work more fully, and such instructions shall be a part of the Contract Documents requirements. Should additional detailed instructions, in the opinion of the Design/Builder, constitute work more than the scope of the Work, the Design/Builder shall submit written notice to the STA within ten (10) calendar days following receipt of such instructions, and in any event prior to commencement of the work on it. The STA will then consider the notice; and, if in the STA's judgment it is justified, the STA's instructions will be revised for the extra work authorized.

ARTICLE 3 – DESIGN/BUILDER’S DUTIES AND RESPONSIBILITIES

3.1 Performance of Work.

- 3.1.1 Design/Builder shall be responsible for achieving the Occupancy and Final Completion Milestones dates in the Project Milestone Schedule as shown in Exhibit A. The schedule may be modified from time to time pursuant to the provisions of the Contract Documents.

3.2 Design/Builder's Responsibilities.

- 3.2.1 Design/Builder further agrees to design and construct the Project in consideration for the STA's payment of the Contract Amount of \$_____ which may be adjusted pursuant to the provisions of this Agreement. The duties and responsibilities include, but are not limited to, the following tasks:

3.2.2 General Responsibilities

- .1 Develop and maintain a Project Management Information System (MIS) to service the entire project, including the Construction Project Manager
- .2 Develop and maintain a STA approved project website fully compatible with the STA's website for the entire duration of the project. The project website shall be utilized, in conjunction with the Management Information System (MIS), to facilitate documentation and real-time exchange of project information including,

but not limited to, Request for Clarifications (RFC's), Substitutions, Deviations, Change Orders, Progress Payments, Submittals, Meeting Agendas, Meeting Notes, Design Decisions, Schedule(s), Drawings, etc. Design/Builder shall meet with the Construction Project Manager to determine specific requirements for the implementation of the project website.

- .3 The Design/Builder is required to deliver to the STA any and all design materials. These materials include, but are not limited to: calculations, preliminary drawings, construction drawings, shop drawings, samples, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.
- 3.2.3 Design Phase Responsibilities -The Design Phase includes the preparation of the design and construction Documents for the project including, but not limited, to all necessary architectural design, specialty consultant services, civil engineering, structural engineering, mechanical engineering, plumbing and HVAC design, fire protection system engineering, landscape architecture, electrical engineering, security system design, telecommunications, data and low-voltage signaling design, geotechnical engineering, topographic and boundary surveying, interior design, space planning and modular furniture systems & fixtures, furniture & equipment coordination, acoustical engineering. The work shall also include all relevant plan checks and permitting activities required for construction activities.
- .1 Systems Confirmation Phase
 - .a Following receipt of a notice to proceed, the Design/Builder shall meet weekly with STA and provide such information as necessary to inform STA of the project design status, and obtain STA input and approval regarding design issues. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. The Design/Builder shall proceed to develop System Confirmation documents. These documents shall depict the materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Bridging Documents.
 - .b Conduct value engineering analysis on selected building components if changed from the Technical Proposal submitted by the Design/Builder or as mutually agreed to by the Parties to determine best value based on initial cost, life expectancy, cost of operation and maintenance. The value engineering analysis shall be performed concurrent with the System Confirmation effort.
 - .c Prepare and periodically update Schedule of Values of the cost of construction to substantiate that the project will not exceed the Contract Amount.

- .d Prepare and periodically update the detailed construction schedule to confirm project delivery within the stipulated milestones.
 - .e Provide services to develop a final space program and prepare plan layouts to reflect the requirements of all tenant departments.
 - .f Participate in the Systems Confirmation Conference with the STA and its consultants within 30 calendar days of the Notice to Proceed, prior to the development of the Construction Documents. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. The deliverables are defined in the appropriate sections of the Contract Documents.
- .2 Construction Documents Phase
- .a Prepare Construction Documents for the entire Project in full compliance with all applicable building codes, ordinances, and other regulatory authorities. The Construction Documents shall at a minimum comply with all applicable California State Building Codes, to include but not be limited to, Title 8 (Industrial Relations) and Title 24 (Building Standards). The completed contract documents are to be delivered to STA and shall consist of the following:
 - Drawings – Provide one reproducible original, and ten (10) printed copies of all approved construction document drawings. Provide one copy of all approved construction document drawings on compact disks (CD) using Computer-Aided Design (CAD) software, using the latest version of AutoCAD.
 - Specifications – Provide original and ten (10) printed copies of approved specifications, bound and organized. Provide approved specifications on compact disks for all sections for all work applicable to the Project; in a format complying with the current edition of the Construction Specifications Institute’s “Master Format”; as directed by the STA and in accordance with the following:
 - 1) Electronic computer software in Microsoft Word, latest version for Windows.
 - 2) Where articles, materials, and equipment are identified by brand names, at least two names shall be used, and such names shall be followed by the words “or equal”. Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by Public Contract Code Section 3400.
 - 3) All disks provided shall be clearly labeled to indicate files contained and date produced.

- .b Upon receipt of the Notice to Proceed, the Design/Builder shall instruct the Architect of Record to commence with the design of the building systems and the preparation of the construction documents. The construction documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality.

The construction documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The Design/Builder shall be responsible to design, prepare construction documents and coordinate all disciplines for the entire project including, but not limited to: all structural elements, building enclosure, roofing, waterproofing, site work, public right-of-way improvements, new parking lots, landscaping, utilities, and all building systems.

Responsibilities also include the design, preparation of construction documents and all coordination necessary for accommodation of interior space construction, modular furniture coordination, finishes, infrastructure, and equipment, all to be provided and installed by the Design/Builder. Refer to paragraph 3.2.4, Construction Phase Responsibilities, for further modular systems furniture workstation requirements. The project's design shall meet or exceed the design and performance criteria stipulated in the Bridging Documents.

- .c The STA's review of the construction documents shall be conducted in accordance with the approved Design/Builder's Baseline Schedule with procedures set forth in Article 7, Schedule. Such review shall not relieve the Design/Builder from its responsibilities under the Agreement. Such review shall not be deemed an approval or waiver by the STA 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 by the Design/Builder and approved by the STA.

- .d However, it is acknowledged by the parties hereto that inherent in a Design Build concept, bridging or otherwise, the production and review of construction documents may be a continuing process with portions thereof completed at different times. However, during Project start-up the Design/Builder will determine the number of design packages with the STA and stipulate the number in the Design/Builder's Project Management Plan. The Design/Builder's Baseline Schedule shall indicate the times for the STA to review the completion of each such portion of the construction documents and a reasonable time for review of same. The minimum review time for major milestone submittals shall not be less than 10 working days.

- .e The Design/Builder shall submit completed packages of the construction documents, in the quantities required by the STA Building Department, the City of Suisun City Fire Department and other applicable authorities

having jurisdiction, at the times indicated on the Design/Builder's Baseline Schedule. Review meetings between the Design/Builder and the STA to review the construction document packages, shall be scheduled and held so as not to delay the Work. After reviewing the construction documents package for conformance to the Criteria Documents and applicable codes, the STA will issue a Building Permit and Notice to Proceed for construction to the Design/Builder.

.3 Ownership of Design Materials

- .a All materials and documents developed in the performance of this Agreement are the property of the STA. The STA shall have unlimited rights, for the benefit of the STA, in all drawings, designs, specifications, notes, and other work developed in the performance of this Agreement, including the right to use same on any other STA work at no additional cost to the STA.

Design/Builder agrees to and does grant to the STA a royalty-free license to all such data that Design/Builder may cover by copyright and to all designs as to which Design/Builder may assert any rights or establish any claim under the patent or copyright laws. The Design/Builder for a period of three (3) years after completion of the Project agrees to furnish and to provide access to the originals or copies of all such materials upon the request of the STA.

The STA agrees to make no demand on Design/Builder and indemnifies the Design/Builder and their Design Team of any damages for responsibility for the STA's use of such materials for any other STA work that is not the subject of an agreement between the STA and Design/Builder for such use.

- .b The STA does not assume any obligation to employ the Design/Builder's services or pay Design/Builder royalties of any type as to future programs that may result from the work performed under this Agreement.

.4 Design Material Errors

The Design/Builder shall be solely responsible for all design errors, including, but not limited to: errors, inconsistencies or omissions in the construction documents, and errors, omissions and inconsistencies that do not conform to the minimum standards of the Contract Requirements and the Bridging Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Design/Builder from the Contract Requirements and the Bridging Documents before commencing activities.

3.2.4 Construction Phase Responsibilities

The Design/Builder shall provide all labor, materials, equipment, temporary utility services and facilities necessary to construct the entire Project as required by the Contract Documents, including, but not limited to:

- .1 The Design/Builder shall provide modular buildings for use as a Project Field Office for both the Design/Builder and Construction Project Manager. The field office shall be available and fully operational for the Construction Project Manager by a date agreed to by the STA following Notice to Proceed but at least one week prior to the commencement of vertical construction on the site, and shall be vacated in an "as found" condition within sixty (60) days after Final Completion.

The Design/Builder shall design, construct, and maintain all necessary improvements to be used for the Project Field Office for the entire duration of the Project. The Design/Builder shall construct and install all improvements to meet Code requirements. The size, configuration, and location of the Project Field Office must be approved in writing in advance by the STA.

All costs such as tenant improvements, furniture, furnishings, equipment, utilities, express mail, janitorial services, and other services and amenities as listed in this section of the Agreement shall be paid for by the Design/Builder. All costs are to be included as part of the Contract Amount, including, but not limited to: modular building leasing and installation; furniture, furnishings and equipment; utilities (including, but not limited to: water, power, sewer, high speed data lines, phone and fax lines); express mail, document reproduction, drinking water, and janitorial services as further described in Exhibit C.

Office furniture, furnishings, equipment and other items required by the STA shall include costs for maintenance agreements, repairs and/or replacement as shown in Exhibit C, including owner-furnished items as described. All office furniture, furnishings, equipment and other items shall be new unless otherwise approved in writing by the STA prior to delivery to the field office. Office space for the Construction Project Manager shall include unless otherwise approved by the STA:

- .1 Two (2) private offices with doors and keyed locksets.
- .2 One (1) clerical support work area.
- .3 One (1) quality assurance work area.
- .6 One (1) conference room with a capacity of twenty (20) or more persons. (can be shared with Design/Builder).
- .7 Separate restrooms for men and women
- .8 Support Area to house files, equipment and miscellaneous items.

The Construction Project Manager will be located in the same facility as the Design/Builder; however, the STA's space shall be segregated from the Design/Builder's space. The Project Field Office for the Design/Builder and Construction Project Manager shall be secured, alarmed and monitored to detect

entry. Design/Builder shall provide four (4) parking spaces for the Construction Project Manager in close proximity of the Project/Field Office. Exhibit C further delineates the field office requirements for the Construction Project Manager.

- .3 Competitively bid all work not performed by the Design/Builder or the Designated Subcontractors in accordance with state law.
 - .a Provide public notice of the availability of work to be subcontracted in accordance with Part 3 of the Public Contract Code.
 - .b The contents of the notice shall state the time and place for receiving and opening of sealed bids and general description of the work in accordance with Part 3 of the Public Contract Code.
 - .c As authorized by the STA, establish reasonable pre-qualification criteria and standards. See Public Contract Code Section 20101.
 - .d Provided that the subcontracted work be awarded to the lowest responsible bidder, subject to Design/Builder's right in its sole discretion, to reject all bids and re-bid any subcontract bid package in the event that all bids exceed Design/Builder's budget for subcontract bid package.
- .4 If a discovery is made of items of archaeological interest on site during excavation activities, the Design/Builder shall immediately cease excavation in the area of discovery and shall not continue until ordered by the Construction Project Manager. Design/Builder shall cooperate with and provide access to the STA's Archaeologist and other monitoring services for this unforeseen condition.
- .5 If a discovery is made of any unforeseen hazardous materials on site during excavation activities, the Design/Builder shall immediately notify the STA and cooperate as necessary, up to and possibly including re-sequencing of work to address the remediation of this unforeseen condition. The Parties agree to work together in ascertain and implement the most cost-effective approach with the least impact to the Project Schedule.
- .6 Design/Builder shall schedule and coordinate partnering sessions to be held every six (6) months during the project. The Design/Builder shall include representation from the professional entities preparing the construction documents and the construction subcontractors as appropriate. STA attendees shall include representatives from the Project Steering Committee, Building Division, and STA's Master Architect and Construction Project Manager. The Design/Builder will also invite representatives from other authorities having jurisdiction over the project.

These Partnering Sessions shall include the following:

- a. A Project Kick-off Partnering Session immediately following the Notice of Award.

- b. A Project Close-out Partnering Session at approximately the 60% completion point in construction, to address occupancy, punch list, commissioning and close-out activities.

These Partnering Sessions are a series of professionally facilitated off-site meeting involving the representatives of the project team for the purposes of team building and problem solving. The Design/Builder shall budget the cost of the partnering sessions within the Contract Amount. The Design/Builder and the STA shall agree on the selection of the partnering facilitator and attendees.

- .7 The Design/Builder shall prepare space plans showing all free-standing furniture, equipment and modular systems furniture (MSF) workstations for the project. Design/Builder shall conduct furniture inventories of existing furniture and, in consultation with the STA, shall indicate the re-use and placement of such existing furniture in the space plans.

The Design/Builder shall coordinate with the STA's furniture vendor to confirm dimensions, details, materials and other pertinent information for the MSF workstations, and coordinate the design and development process with the STA's furniture vendor/installer for modular systems furniture provided by the STA. The Design/Builder will prepare fully dimensioned floor plans including clear dimension requirements, showing the MSF requirements including work surfaces, storage units, computer related components and other accessories.

The STA's MSF workstation vendor will utilize the Design/Builder's drawings to prepare "installation" drawings, which will be reviewed and approved by Design/Builder for conformance to the space plan drawings. The Design/Builder will make available loading dock and elevator operators as needed to support the STA's MSF workstation installer delivering, distributing, and installing the MSF workstation components. Once the MSF workstations are installed, the Design/Builder will install and connect the necessary telecommunications cable within the MSF workstations, and connect the electrical power to the MSF workstations as required.

- .8 The Design/Builder will assist the STA in planning and implementing a coordinated Occupancy Plan that will include a Move Schedule indicating the critical activities for relocation of all personnel that will occupy the project. The plan will be developed by the STA, in conjunction with the STA's consultants, moving companies, landlords, modular furniture systems vendors, telecommunication companies and others. The Move Schedule will include at a minimum:

- (1) mobilization
- (2) move management
- (3) timing of lease cancellation notices
- (4) pre-move activities including MIS/Telecommunications pre-installation and testing activities
- (5) move-in dates including building protection
- (6) post move-in activities (i.e. punch-list coordination and follow-up.)

Design/Builder shall provide all labor necessary to assist the STA during the relocation process, including elevator operators, electricians, plumbers, modular furniture installers, temporary protection of finishes, etc.

- .9 The Design/Builder shall secure the services of a professional photographer who is skilled and experienced in construction photography and whose work samples are acceptable to the STA, and shall not replace the photographer without the STA's written approval. The Design/Builder shall submit one print and digital copy of each, of six color photographs of the building, and six color photographs of the Site Improvements. The photographs shall be 8" x 10", smooth surface, glossy print, single weight paper with white base. Provide one general color photograph and digital copy of the site from a location designated by the STA. The cost of the photographer (including any publication releases), and the building and site photographs shall be included in the Contract Amount.

On the back of each print, in a manner not damaging to the print, show the Job name, location from which photographed, date of photograph, photographer's name, address, and photograph number. The Design/Builder shall require the photographer to retain the digital copies for at least four (4) years following Date of Substantial Completion, and to provide additional prints to the STA during that period at the prevailing commercial rates for such prints. Do not permit prints to be issued for any other purpose without specific written approval from the STA.

Except as otherwise specifically approved by the STA, prepare and submit the photographs monthly from groundbreaking through project completion, within three calendar days of the date of the Design/Builder's application for progress payment. To the maximum extent practicable, make photographs at approximately the same time of day through progress of the work. When inclement weather is anticipated, consult with the STA and determine acceptable alternative arrangements. Except as otherwise specifically approved by the STA, make the photographs from six separate locations each for the Building and Site Improvements.

The STA will select the locations to provide diversified overall views of the work, from positions which are expected to remain accessible throughout progress of the work. Identify each location by word description, by marked drawing, or by such other means as acceptable to the STA, to enable future photographs to be taken from the same position. When so directed by the STA, because of the stage of construction, change one or more of the locations to new locations inside or outside the buildings. Make each photograph clear, in focus, with high resolution and sharpness, and with minimum distortion.

3.3 Standards of Performance.

The Work on the project shall be performed in accordance with the professional standards and quality of care applicable to projects, buildings or work of similar size, complexity, quality and scope constructed within a California urban environment

- 3.3.1 The Design/Builder shall assign _____, Project Manager, as previously approved by the STA. The Project Manager shall be assigned to the project on a full-time basis and shall remain on the project on a full-time basis through Final Completion. The Design/Builder shall make assignments of consultants and subcontractors as detailed in the Proposal.

The Design/Builder may make additions or substitutions to personnel and responsibilities provided they are suitably qualified and are approved by the STA in writing. If personnel assigned by the Design/Builder fail to meet the professional standards required or are persistently uncooperative, in the sole discretion of the STA, the STA may request substitution of such personnel. Once notice of such request has been received, the Design/Builder shall have twenty (20) business days to substitute such other personnel as approved by the STA.

- 3.3.2 The Design/Builder shall employ a full-time, competent on-site project team including but not limited to project manager, superintendent, and necessary assistants who shall be in attendance at the Project Site during the construction of the project. The project manager shall represent the Design/Builder, and communications given to and by the project manager shall be as binding as if given directly to and by the Design/Builder. The Design/Builder shall confirm all communications in writing.
- 3.3.3 At any other time when the project manager is absent from the Project Site because no work is being performed, the project manager shall nevertheless keep the STA advised of the project manager's whereabouts so that the project manager may readily be reached and available for consultation at the Project Site at any time.

3.4 Applicable Laws and Codes.

The Design/Builder shall comply with all applicable laws, codes, and ordinances and shall give notices as applicable. Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the work and shall secure and pay as part of the Contract Amount, for plan check and permits fees, licenses and inspections required (except that STA shall pay the cost of the Building Permit issued by City of Suisun City).

- 3.4.1 The Design/Builder shall comply with the current adopted edition of the California Building Code ("CBC"), including any updates up to 90 days following the date the Design/Builder submits the project for plan check. Whenever the Contract Documents require higher standards than the minimum required by applicable laws, the Contract Documents shall take priority. To the extent there is a change in one or more applicable laws after 90 days following the date the Design/Builder has submitted the project for plan check, and such change has the effect of increasing the cost or time of performance of the work, then such change may be the subject of a Change Order upon the agreement of the parties. Nothing in the Contract Documents shall be construed to permit work not conforming to applicable laws.

3.4.2 Design/Builder shall submit for review to the STA and to other authorities having jurisdiction required calculations and other materials demonstrating the energy use of proposed systems and sustainability.

3.5 Permits, Fees and Notices.

3.5.1 Unless otherwise provided in the Contract Documents, the Design/Builder shall be responsible for required permits, governmental fees, licenses, inspections, approvals, notices and actions necessary to complete the Work and to prepare all documents customarily required for regulatory agency approvals. STA shall be responsible for the cost of the building permit and such cost shall not be included in the Contract Amount. Design/Builder shall provide a minimum of 5 working days' notice to STA to cut checks for the building permit. Design/Builder shall be responsible for cost of all other permits, fees and licenses required for the proper execution and completion of the work, and such appropriate costs shall be included in the Contract Amount.

3.5.2 Design/Builder shall promptly, notify the STA, in writing, of variances observed between the Contract Documents and applicable laws. The Design/Builder shall bear responsibility for any attributable costs for work performed, without prior notice to the STA, known to be contrary to applicable laws.

3.5.3 The Design/Builder may be subject to municipal, county, or state laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon STA property, and shall be solely responsible for meeting these requirements.

3.5.4 The Design/Builder shall pay any site de-watering fees and will cooperate with the STA in any reasonable measure to limit the quantity of de-watering.

3.5.5 The Design/Builder shall assume responsibility for all utility assessments and connection fees levied by the City of Suisun City, or other utility service provider.

3.6 Use of Project Site.

3.6.1 The Design/Builder shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents.

3.6.2 The Design/Builder shall perform no operations of any nature on or beyond the limits of Work or premises, except as such operations are authorized in the Contract Documents, or authorized by the STA.

3.6.3 The Design/Builder shall provide and maintain a temporary construction fence and suitable temporary barriers as required preventing public entry; protecting the work and existing facilities, persons, and trees and plants from damage or injury from construction operations. Temporary barriers shall be maintained in a structurally sound condition and neat appearance.

- 3.6.4 Should regulatory requirements necessitate construction of temporary barriers, barricades, or pedestrian walkways not indicated or specified, construct at no increase in the Contract Amount. If required, Design/Builder will paint such items in a color selected by the STA's Representative.
- 3.7 Cutting and Patching
- 3.7.1 The Design/Builder shall be responsible for cutting, fitting or patching required to complete the Work.
- 3.7.2 The Design/Builder shall not damage nor endanger the Work by cutting, patching or otherwise altering the construction, and shall not cut nor otherwise alter the construction without prior written consent of the STA.
- 3.8 Cleaning
- 3.8.1 The Design/Builder shall keep the Project Site and surrounding areas free from waste materials and/or rubbish caused by operations under the Agreement and at other times when directed by the STA. At all times while finish work is being accomplished, floors shall be kept clean, free of dust, construction debris and trash. Prior to issuance of the Certificate of Final Completion, the Design/Builder shall remove from the Project Site the Design/Builder's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project site thoroughly clean, and ready for the STA's final inspection.
- 3.8.2 If the Design/Builder fails to clean up as provided in the Contract Documents, the STA may do so, and the cost thereof charged to the Design/Builder.
- 3.9 Site Availability.
- 3.9.1 The STA shall turn over the Site to the Design/Builder as described in the Notice to Proceed and as further described in EXHIBIT A – PROJECT MILESTONE SCHEDULE, at which time the Design/Builder shall be obligated to take control and responsibility. The Design/Builder shall provide the STA, Construction Project Manager and other STA consultants with continuous access to the Site.
- 3.9.2 Temporary parking facilities shall meet all applicable regulatory requirements applicable to design and construction. Design/Builder shall be responsible for all permits, design, and construction required including, but not limited to lighting, access, signage, handicap accessibility, and maintenance.
- 3.10 Site Conditions.
- 3.10.1 The Design/Builder represents that it has investigated visibly observable site conditions within the industry standard of care 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;

- (b) the availability of labor, water, power and roads;
- (c) physical conditions at the Site;
- (d) the conditions of the ground;
- (e) the character of equipment and facilities needed prior to and during the performance of the Work.

3.10.2 To the extent the Design/Builder encounters subsurface conditions or hazardous materials which differ materially from that actually known by the Design/Builder, or from those ordinarily known to exist or could have been reasonably discovered within the time permitted during the Request for Proposals, or generally recognized as inherent in the area, then notice by the Design/Builder shall be immediately given to the STA, before conditions are disturbed, and in no event later than two (2) business days after the first observance of the conditions. If such conditions could not have been reasonably identified by Design/Builder's site investigations and available existing data, and the Design/Builder incurs significant additional costs or delays because of such concealed conditions, such conditions may be the subject of a Change Proposal.

Should any existing utilities or services be disturbed, disconnected or damaged during construction, the Design/Builder shall be responsible, at no additional cost or time to the STA, for all expenses and consequential damages of whatever nature arising from such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.

3.10.3 The Design/Builder is responsible for foreseeable site conditions and toxic materials to the extent described in the contract documents and/or could be reasonably inferred by the Design Build team based on their experience and expertise on similar projects in urban areas.

3.11 Hazardous Materials.

The parties agree to work together in accordance with Section 3.2.4.5 above regarding the investigation and performance of remedial actions on all hazardous materials and other related environmental requirements located on the Project site.

Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered within the time permitted by the Design/Builder to prepare its Proposal, may properly be the subject of a Change Proposal. The STA agrees that the Design/Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

3.11.1 "Hazardous materials" means any substance, the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; 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 limitations, the Comprehensive

Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); 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; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the STA; 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; the presence of which on adjacent properties could constitute a trespass by the Design/Builder or the STA; or as defined in the California Health and Safety Code.

3.11.2 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the State of California and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: 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 all requirements pertaining to the protection of the health and safety of employees or the public.

3.11.3 The indemnification provision of the Agreement, Paragraph 12.3, Indemnification, is applicable to this paragraph in its entirety.

3.12 Shop Drawings, Product Data, Samples, Materials, and Equipment.

3.12.1 Shop drawings means drawings, submitted to Design/Builder by, subcontractors, manufacturers, supplier or distributors showing in detail the proposed fabrication and assembly of building elements and the installation (i.e., form, fit, and attachment details) of materials or equipment.

3.12.2 Design/Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design/Builder's construction documents and shall indicate its approval thereon as evidence of such coordination and review.

3.12.3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Bridging Documents.

3.12.4 Prior to placement of material orders or start of component fabrication, the Design/Builder shall submit to the STA all shop drawings approved by the

Architect of Record and samples of submittals that relate to finish materials and products.

3.12.5 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the STA.

3.13 Field Engineering.

3.13.1 The Design/Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and bench marks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.

3.13.2 The Design/Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction and shall require the engineer or surveyor to replace control points which become lost or destroyed.

3.14 Site Conditions.

3.14.1 The STA has provided the Design/Builder with preliminary geotechnical data and site conditions, Title Reports and other relevant documents that are included in the appendix to the Request for Proposals. Design/Builder shall be responsible to verify the accuracy of the information provided, and, at its cost, obtain any additional measurements, verifications, or supplemental geotechnical report or land survey to the extent necessary to obtain any permits and clearances required by the Authorities having Jurisdiction over the Project.

3.14.2 The Design/Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work.

3.14.3 The Design/Builder shall obtain, and pay for, the services of geotechnical engineers licensed in the State of California and other consultants to provide services deemed necessary by the Design/Builder. Such services may include reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional interpretations and recommendations thereof.

3.15 Meetings and Reports.

3.15.1 Prior to commencement of the work, the Design/Builder shall attend a Project Kick-off meeting, at a time and a place selected by the Construction Project Manager, to discuss procedures to be followed during the work. Design/Builder shall follow the procedures as set forth by the Construction Project Manager and as provided in the Design/Builder's procedure manual to be supplied at the Kick-off conference. The purpose of the meeting will be to introduce the STA's key

personnel and to review the contract provisions and any other items pertaining to the project.

3.15.2 Once a week, or at such interval as mutually agreed by the parties, the Construction Project Manager will meet with the Design/Builder to review the overall project progress, the status of the design and/or construction, and to discuss any problems that may arise. The Design/Builder and his Architect shall attend all progress meetings. Subconsultants, Subcontractors and Vendor Representatives shall attend the progress meetings as appropriate to the particular stage of the work.

3.15.3 Each month the Design/Builder shall attend a payment meeting with the Construction Project Manager to agree on the percentage of the work completed during the current month and establish an amount to be requested in the Application for Payment.

3.15.4 The Design/Builder shall prepare and submit to the STA, during design completion, the construction document phase, and the construction phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the STA. Six (6) bound copies of the Reports shall be furnished at the time of submission of each monthly application for payment. In addition, Design/Builder shall post electronic copies of the Report at a Prolog (or equivalent as determined by STA) Website to be provided and maintained by the Design/Builder including all software, server(s) hardware, and communications (DSL, etc.). The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

3.15.5 Thirty days prior to the estimated final completion, the Design/Builder shall hold a meeting to review maintenance manuals, guarantees, close-out submittals, bonds, and service contracts for materials and equipment. Implement repair and replacement of defective items, and extend service and maintenance contracts as desired by the STA.

3.16 Other Reports.

3.16.1 The Design/Builder will cooperate with the STA, and as may be requested, assist in preparing periodic project reports required by the STA Board and the City of Suisun City Council.

3.17 Notices of Labor Disputes.

3.17.1 If Design/Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, Design/Builder shall immediately give notice including all relevant information to the STA.

3.17.2 Design/Builder agrees to insert the substance of this Article including this Clause in any subcontract to which a labor dispute may delay the timely performance of

the Work, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay, by any actual, or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Design/Builder, as the case may be, of all relevant information concerning the dispute.

3.18 Guarantee.

3.18.1 The Design/Builder unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion, unless otherwise agreed to by the parties. For equipment or building components started in operation prior to Final Completion, the Design/Builder shall, at no additional cost to the STA, provide extended guarantees such that the guarantee period will be in force for the full year after Final Completion.

The Design/Builder shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the STA; ordinary wear and tear and abuse excepted.

3.18.2 The Design/Builder further agrees, within seven (7) days after being notified in writing by the STA, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design/Builder shall commence to execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the STA finds that the Design/Builder fails to perform any of the work under the guarantee, the STA will proceed to have the work completed at the Design/Builder's expense and the Design/Builder will pay costs of the work upon demand. The STA will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the Design/Builder's refusal to pay the above costs.

3.18.3 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of STA employees, property, or licensees, the STA may undertake, at the Design/Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design/Builder not being in accordance with the requirements of the Contract Documents.

3.19 Warranty.

3.19.1 The Design/Builder warrants to the STA 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. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes

improper operation, or normal wear and tear under normal usage under the control of the STA. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the STA to maintain an action for breach of contract against the Design/Builder.

3.20 Patents, Trademarks, and Copyrights.

3.20.1 The Design/Builder shall pay, as part of the Contract Amount, 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 indemnify, defend, and hold harmless the indemnified parties from any claims, causes of action, losses, or costs related to any and all matters arising in connection with Work on the Project (such costs to be paid as part of the Contract Amount), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the STA, 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 STA with prompt written notice of the Design/Builder's belief, and the STA has nevertheless elected to go forward with such design, process, or product so specified.

3.21 Taxes.

3.21.1 The Design/Builder shall pay all applicable taxes for the Work, or portions thereof provided by the Design/Builder, which were legally enacted as of thirty (30) days prior to the submission of the Design/Builder's Request for Proposal, whether or not yet effective or merely scheduled to go into effect. Any federal, state, or local taxes payable on any materials, labor or any other thing to be furnished by Design/Builder under the Contract Documents and in effect thirty (30) days prior to the submission of the Design/Builder's Request for Proposal shall be included in the Contract Amount and paid by Design/Builder.

3.22 Tests and Inspections.

3.22.1 The Design/Builder shall be responsible for providing a Quality Assurance Manager assigned to the Project and obtaining and hiring full-time independent testing and inspection services (including Special Testing and Inspections) for the Project. The Quality Assurance Manager and the firm retained by the Design/Builder to perform Special Testing and Inspections shall be subject to approval by the STA. The Design/Builder shall provide the STA with the detailed qualifications of the Quality Assurance Manager and the firm retained by the Design/Builder to perform special testing and inspections including but not limited to, a description of previous relevant project experience, and all training, licensing and certifications.

The Design/Builder shall be responsible for requesting and scheduling all tests and inspections necessary to ensure the quality of the Work are in accordance with the terms of the Contract Documents. The Design/Builder shall always permit the STA and its agents, inspectors, officers, and employees to visit the Project Site and inspect the Work and such other locations where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. When the Contract Documents require a portion of the work to be tested, such portion of work shall not be covered up until inspected and approved. The Design/Builder shall be solely responsible for notifying the STA where and when the work is ready for inspection and testing. The STA shall provide inspectors to review and verify compliance of the Design/Builder's quality control and assurance teams with the contract documents.

Should any work be covered without the required testing or witnessed by the STA, such work shall be uncovered at the Design/Builder's expense. Whenever the Design/Builder intends to perform work on Saturday, Sunday, or a legal holiday, the Design/Builder shall give written notice to the STA of such intention at least forty-eight (48) hours prior to performing the work, so that the STA may make necessary arrangements.

- 3.22.2 If the STA determines that portions of the Work require additional testing or inspection that is not included in the Contract Documents, the STA will instruct the Design/Builder, in writing, to make arrangements for additional testing or inspection by an entity acceptable to the STA, and the Design/Builder shall give 48 hours written notice to the STA of where and when tests and inspections will be conducted so that the STA may observe the procedures. The STA will bear the costs except as provided in Subparagraph 3.22.1.
- 3.22.3 If procedures for testing, inspection or approval under Subparagraphs 3.22.1, 3.22.2 and 3.22.3 reveal failure of a portion(s) of the work to comply with the Contract Documents, the Design/Builder shall bear all costs and time made necessary by such failure(s) including those of repeated procedures and compensation for the STA's services and expenses. The Design/Builder shall notify the STA in writing within 24 hours of any test conducted by the independent testing agency reveals work failing to comply with the contract documents.
- 3.22.4 Required certificates of testing and inspection shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and delivered to the STA within seven (7) days after each test.
- 3.22.5 Provide qualified on-site personnel to review and record daily construction activities, including subcontract activities, to determine adequacy of work and compliance with the approved plans and specifications. Provide written daily reports in the Prolog Daily Report (or equivalent as determined by STA) format including, but not limited to: project title, date of work, contract day, weather and conditions (temperature, wind, humidity, etc.), a description of the work in

progress by corresponding schedule activity number(s), name of each subcontractor on site and work being performed, location of each trade on the project site, total daily man count per trade (including the Design/Builder's work force), material deliveries and quantities, equipment deliveries, potential delays and delays encountered, orders of instruction, unsatisfactory work, tests performed, safety concerns, visitors, and any other issues to document work performed and areas of concern.

Daily reports shall be signed by the Design/Builders' Quality Assurance Manager and Project Manager and submitted to the Construction Project Manager no later than the 12:00 p.m. following the day work was performed. The Design/Builder shall separately provide written reports to the Construction Project of any noted deficiencies in the installed work and corrective measures taken, and test reports of work being installed.

3.23 Air Pollution.

3.23.1 The Design/Builder and each subcontractor shall comply with all State, STA and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Agreement. If there is a conflict between the State, STA and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern, unless otherwise agreed to in advance by the parties.

3.24 Not used.

3.25 Unfair Business Practices.

The Design/Builder agrees, and will require all of the Design/Builder's contractors and subcontractors and suppliers to agree, to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract Documents or any subcontract there under. An assignment made by the Design/Builder, and all additional assignments made by subcontractors and suppliers, shall be deemed to have been made and will become effective at the time the STA tenders Final Payment to the Design/Builder, without further acknowledgment of the parties.

ARTICLE 4 – STA's DUTIES AND RESPONSIBILITIES

4.1 STA's Representative.

4.1.1 The STA shall designate, from time to time, one or more representatives authorized to act on the STA's behalf with respect to the Project, together with the scope of his/her respective authority. Functions for which this Design Build Agreement provides to be performed by the STA may be delegated by the STA only by written notice to the Design/Builder from the STA.

The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Design Build Agreement. Directions and decisions made by Authorized Representatives of the STA shall be binding on the STA.

4.2 Communication with the Design/Builder.

4.2.1 During the term of this Design Build Agreement, the STA shall communicate with the Design/Builder, subcontractors, suppliers, and others performing any part of the Work only through the Design/Builder's Authorized Representatives, as may be amended, subject to any approvals required by the STA as described in the Contract Documents.

4.3 STA's Consent.

4.3.1 Whenever the STA's consent, review, 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 Design Build Agreement does not expressly state that the STA may act in its sole discretion, such consent, review, satisfaction or determination shall not be unreasonably withheld.

The STA shall cooperate fully with the Design/Builder and shall furnish decisions, information, and/or reviews required by this Design Build Agreement in a timely manner so as not to delay the Work, provided that the STA shall have no less time for review than set forth in the Project Baseline Schedule as developed by the Design/Builder and accepted by the STA.

4.4 STA Review of Design Materials.

4.4.1 The Design/Builder shall be entitled to proceed with all or a part of the construction phase of the Project upon the STA's review and approval of the design and construction documents, and any subsequent submittals or shop drawings for conformance with the Bridging Documents, and other Contract Documents. If the STA modifies or otherwise changes in a material way the Scope of Work called for in the construction documents, subsequent submittals or shop drawings, after such review for conformity, the Design/Builder shall be entitled to a Change Order in accordance with Article 8, Changes in the Work, of the Agreement. In no event shall a Change Order be issued to the extent such modification is due to the fault or neglect of the Design/Builder, or in the event the original submittals were not accompanied by annotations showing nonconformance with the Contract Documents, if any.

ARTICLE 5 – SUBCONTRACTING AND LABOR

5.1 Subletting and Subcontracting.

5.1.1 The Design/Builder shall adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code section 4100. Subcontractor substitutions shall be in

accordance with the Act and any violations may subject the Design/Builder to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act.

5.1.2 The Design/Builder shall be responsible for all work performed under this Agreement. All persons engaged in the Project will be considered employees of the Design/Builder. The Design/Builder shall give personal attention to fulfillment of the Agreement and shall keep the Work under the Design/Builder's control. When any subcontractor fails to execute a portion of the work in a manner satisfactory to the STA, the Design/Builder shall remove such subcontractor immediately upon written request notice from the STA, and the subcontractor shall not again be employed on the Project. Although Specification Sections, Part 4 of the Contract Documents, may be arranged according to various trades or general grouping of work, the Design/Builder is not obligated to sublet work in such manner. The STA will not entertain requests to arbitrate disputes among subcontractors or between the Design/Builder and subcontractor(s) concerning responsibility for performing any part of the Work.

5.1.3 The STA may not permit a subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

Any contract on a public works project entered into between a Design/Builder and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by the Design/Builder on the project shall be returned to the awarding body by the Design/Builder. The Design/Builder shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

5.2 Subcontracting Relations.

The Design/Builder shall, by subcontractor agreement, require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Design/Builder by terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities which the Design/Builder, by the Contract Documents, assumes toward the STA. Each subcontractor agreement shall preserve and protect the rights of the STA under the Contract Documents with respect to the work to be performed by the subcontractor.

The subcontractor shall be allowed, unless specifically provided otherwise in the subcontractor agreement, the benefits of all rights, remedies and redress against the Design/Builder that the Design/Builder, by the Contract Documents, has against the STA. The Design/Builder shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Design/Builder shall make available to each proposed subcontractor, prior to the execution of the subcontractor agreement, copies of those portions of the Contract Documents to which the subcontractor will be bound.

Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

5.3 Subcontractor Progress Payments.

Within ten (10) days of receipt of each progress payment, the Design/Builder shall make payment to subcontractors in accordance with Public Contract Code section 10262.

5.4 Contract Assignments.

Performance of the Contract Documents may not be assigned except upon written consent of the STA. Consent will not be given to an assignment that would relieve the Design/Builder or the Design/Builder's surety of their responsibilities under the Contract Documents.

5.5 Statement Of Compliance.

The Design/Builder's execution of this Agreement shall constitute a certification under penalty of perjury under the laws of the State of California that the Design/Builder will, unless exempted, comply with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103, as further described in Document 00820, Nondiscrimination Standards.

5.6 Drug-Free Workplace Certification.

By signing this Agreement, the Design/Builder certifies under penalty of perjury under the laws of the State of California that the Design/Builder will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the actions as described in Document 00821.

5.7 Nondiscrimination.

5.7.1 Equal Employment Opportunity. Design/Builder agrees for the duration of this Contract that it will not discriminate against any employee or applicant for employment because of age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation or other protected status. The Design/Builder will take affirmative action to ensure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or disability. The Design/Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the Nondiscrimination Clause.

a. The Design/Builder will in all solicitations or advertisements for employees placed by or on behalf of the Design/Builder, state that all qualified applicants will receive consideration for employment without regard to age, ancestry, color,

gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.

- b. The Design/Builder will send to each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the workers' representative of the Design/Builder commitments under this Agreement. The Design/Builder agrees that it will comply with the provisions of Titles VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2716 and California Government Code Section 12990.
- c. The Design/Builder agrees that it will assist and cooperate with the STA, the State of California and the United States Government in obtaining compliance with the Equal Opportunity Clause, rules, regulations and relevant orders of the State of California and United States Government issued pursuant to the above-referenced Acts.
- d. In the event of the Design/Builder's non-compliance with the Nondiscrimination Clause or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part by the STA.

5.7.2 Disabled Non-Discrimination. This project is subject to Section 504 of the Rehabilitation Act of 1973 as amended, (29 U.S.C. 794), the Americans with Disabilities Act of 1990 and all requirements imposed by the guidelines and interpretations issued in furtherance of the ADA. In this regard, the STA, its Design/Builders and subcontractors will take all reasonable steps to ensure that disabled individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

5.7.3 Fair Employment and Housing Act Addendum. In the performance of this Agreement, the Design/Builder will not discriminate against any employee or applicant for employment because of age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation. The Design/Builder will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Design/Builder shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

- a. The Design/Builder will permit access to all applicable records of employment, employment advertisements, application forms and other pertinent data and records by the California Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for

the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this Contract.

- b. The State or STA may determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which Design/Builder was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Design/Builder has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Sections 12900, et seq.
- c. For willful violation of this Fair Employment and Housing provision, the STA may terminate this Contract either in whole or in part and any loss or damage sustained by the STA in securing replacement goods or services shall be borne and paid for by the Design/Builder and by his surety under the Performance Bond, and/or the STA may deduct from any moneys due or that may become due to the Design/Builder to compensate the STA, the difference between the price named in the Agreement and the actual cost to the STA.

5.8 Wages and Records.

5.8.1. Wage Rates

- a. Pursuant to Section 1770 and 1773 et seq. of the Labor Code of the State of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification, or type of workman needed to execute the Agreement, copies of which are on file and available upon request from the California Department of Industrial Relations.
- b. The Design/Builder and any subcontractor under him, must not pay less than prevailing wage rates to all laborers, workmen and mechanics employed in the execution of the Contract. It is further expressly stipulated that the Design/Builder shall, as a penalty to STA, forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic paid less than the stipulated prevailing rates for any work done under this Agreement by him or by any subcontractor under him and Design/Builder agrees to comply with all provisions of Section 1770 et. Seq. of the Labor Code.
- c. In case it becomes necessary for the Design/Builder or any subcontractor to employ on the Project under this Agreement any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is specified, the Design/Builder shall immediately notify the STA who will promptly determine the prevailing rate for such additional trade or occupation and shall furnish the Design/Builder with the minimum rate. The minimum rate furnished shall be applicable as a minimum for such trade or occupation from the time of the initial

employment of the person affected and during the continuance of such employment.

- d. Pursuant to Sections 1770 and 1773 of the Labor Code, the general prevailing rate of per diem wages applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work are set forth by the Director of the California Department of Industrial Relations and are a part of the Agreement. The Design/Builder is required to post a copy of these prevailing wages rates on the job site.
- e. The STA will not recognize any claim for additional compensation because of the payment by the Design/Builder of any wage rate more than the prevailing wage rate set forth as provided herein. The possibility of wage increases is one of the elements to be considered by the Design/Builder in submitting its Design Build Proposal and will not under any circumstances be considered as the basis of a claim against the STA on the Contract.

5.8.2 Wage Records

- a. The Design/Builder and each subcontractor shall keep or cause to be kept an accurate record (certified payroll) showing the names and occupations of all laborers, workers and mechanics employed by him in connection with the execution of this Contract or any subcontract thereunder and showing also the actual per diem wages paid to each of said workers, which records shall be provided to the STA and to the California Department of Industrial Relations upon its request. Copies provided will include one, which has the name and social security numbers marked out.
- b. The Design/Builder shall meet the requirements of Section 7-1.01A(3). "Payroll Records", of the State of California Standard Specifications. The Design/Builder shall be responsible for compliance by his subcontractors.
- c. Certified Payroll records shall be submitted with each Monthly Progress Payment request showing records within ten (10) days of the billing period. The Design/Builder shall provide all information reasonably required by Labor Trade organizations.

ARTICLE 6 – PAYMENTS AND COMPLETION

6.1 Contract Amount.

In consideration of Design/Builder's obligations under the Contract Documents, Design/Builder will be paid the Contract Amount, in accordance with the payment procedures set forth herein. Except as otherwise provided in the Contract Documents, the Contract Amount will fully compensate Design/Builder for all of the services required under the Contract Documents, including the scope of services described in this Agreement.

6.2 Schedule of Values.

6.2.1 Within thirty (30) days of executing this Design Build Agreement and prior to the first Application for Payment, the Design/Builder shall submit to the STA a Schedule of Values to complete the Project, supported by such data to substantiate the accuracy as the STA may require. This Schedule of Values, unless objected to by the STA within 15 days of receipt, shall be used as a basis for progress payments.

6.2.2 This Schedule of Values may be adjusted from time-to-time as the subcontracting plan is finalized.

6.3 Application for Payment.

The Design/Builder shall deliver to the STA on the last business day of each month, or as otherwise agreed by both parties, an Application for Payment, in the format approved by the STA, covering that portion of the Contract Amount allocated to the Work completed during each month and in accordance with the Schedule of Values. Invoices shall include the contract number, the project number, the amendment number, Design/Builder's Federal Employer Identification Number (FEIN); and shall be submitted to the STA, attention of the Project Director in care of the Construction Project Manager.

Application for payment shall not be submitted more frequently than once monthly. The application for payment shall be signed by an officer or designee of the Design/Builder's firm. Provided the Application for Payment is received and approved by the STA, the STA shall make payment to the Design/Builder not later than thirty (30) days after receipt by the STA of the approved payment application. 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 in accordance with the Schedule of Values during such month and the percentage of completion of each category of Work.

6.4 Progress Payments.

The STA shall pay the Design/Builder the progress payments through the period covered by the Application for Payment, less five percent (5%) retention. Upon receipt of an Application for Payment from the Design/Builder, the STA will promptly review the same to determine if it is a proper Application for Payment based on the approved Schedule of Values. Any Application for Payment determined by the STA not to be suitable for payment shall be modified and processed per the STA's assessment. The reason(s) the Application for Payment was deemed unsuitable shall be stated in writing.

6.5 Withholding of Payment.

6.5.1 Notwithstanding the provisions of Subparagraph 6.11.6, Final Payment, the STA may withhold payment because of an Application for Payment to the extent necessary to protect the STA from loss because of:

.1 Defective Work not remedied;

- .2 Third-party claims filed against the STA for which the Design/Builder is solely responsible pursuant to this agreement and provided that the amount of such claims exceeds the amount of retention held by the STA.
 - .3 Failure of the Design/Builder to make payments of undisputed amounts to Design Build team consultants or subcontractors for labor, materials, or equipment;
 - .4 Damage to the STA caused by the fault or neglect of the Design/Builder to the extent not covered by insurance and provided that the amount of such claims exceeds the amount of retention held by the STA; or
 - .5 Reasonable evidence that the Work will not be substantially completed within the Contract Time due to delay not considered a Compensable Event, and that unpaid balance of the Contract Amount would not be adequate to cover liquidated damages for the anticipated inexcusable delay.
- 6.5.2 When the above reasons for withholding payment are removed, payment less retention shall be made for amounts previously withheld. Prior to any withholding pursuant to this paragraph, the STA shall meet with the Design/Builder to discuss potential withholding and shall attempt in good faith to resolve such issue without the need for withholding. Amounts withheld shall bear interest at whatever rate is paid to the STA from time to time for funds it may have on deposit, from the date the funds would otherwise have been due until paid, if at all. In lieu of withholding the Design/Builder may deposit securities equivalent to the amount withheld in accordance with the procedures outlined in Article 6.10.1.1

6.6 Payment for Stored Materials.

Unless otherwise provided in the Contract Documents, payment will be made on account for materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and/or if approved in advance by the STA, payments may be made for materials or equipment stored at some other location agreed upon in writing. Payments made for materials or equipment stored on or off-site shall be conditioned upon submission by the Design/Builder of bills of sale or such other procedures satisfactory to the STA to establish STA's title to such materials or equipment or otherwise protect the STA's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off-site.

6.7 Payments as Trust Funds.

Any and all funds payable to the Design/Builder are hereby declared to constitute trust funds in the hands of the Design/Builder to be applied first to payment of claims of subcontractors, sub-subcontractors, architects, engineers, surveyors, laborers, material men or employees arising out of the described Work, to obligations for utilities furnished, tax imposed or such to the payment of premiums on security or other bonds, and to payment of insurance premiums relating to the Project and to payments and contributions to union pension plans and trust funds before application to any other purpose.

6.8 Payment Not a Waiver.

6.8.1 No payment hereunder, including Final Payment to Design/Builder, nor STA's use or Beneficial Occupancy of the Work, shall release Design/Builder with respect to design, construction, workmanship, materials, equipment or machinery incorporated in the Work which are found to be defective, unsound or improper.

6.8.2 No payment made under the Design Build Agreement, shall be evidence of performance thereof, either wholly or in part, nor shall it be construed to be acceptance of defective work or improper material, or an approval of any items in any application for payment.

6.9 Waiver of Lien and Payment Bond Rights.

The Design/Builder shall attach to each application for payment, a waiver of all lien and payment bond rights, with respect to all amounts requisitioned up to and including the then current requisition from the Design/Builder, which waiver of lien and payment bond rights covers all amounts requisitioned from the Design/Builder's subcontractors and all tiers and suppliers. Upon request, Design/Builder shall make available copies of similar waivers from its subcontractors of all tiers and suppliers.

6.10 Retentions.

The STA will retain five percent (5%) of such estimated value of all Work completed (including design and other professional services) and a like percentage within limits established by law, of the value of materials so estimated to have been furnished, delivered and unused, as aforesaid, as part of security for fulfillment of the Contract Documents by the Design/Builder. At any time after ninety-five percent (95%) of the Work has been completed, the STA may reduce funds withheld to an amount not less than one hundred twenty-five percent (125%) of the estimated value of the Work yet to be completed, as determined solely by the STA. The completion of the design work will be evaluated separate from the construction effort, and redirection of retainage will be evaluated accordingly. The STA will pay monthly to the Design/Builder while executing the Work the balance not retained after deducting all previous payments and all sums to be retained under provisions of the Contract Documents.

Investment Options:

- .1 At the request and expense of the Design/Builder, and in accordance with the Public Contract Code, securities equivalent to the amount withheld may be deposited with the STA Treasurer or, a state or federally chartered bank in California, as the escrow agent, who shall then pay the moneys to the Design/Builder. Upon satisfactory completion of the Agreement, the securities shall be returned to the Design/Builder.
- .2 Alternatively, the Design/Builder may request, and the STA will make payment of the retention earned directly to the escrow agent. The Design/Builder may direct the investment of the payments into securities and the Design/Builder shall receive the interest earned on the investments upon the same terms provided for

securities deposited by the Design/Builder. Upon satisfactory completion of the Work, the Design/Builder shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the STA, pursuant to the terms of Final Payment.

- .3 Securities eligible for investment shall include those listed in Government Code Section 16430; bank or savings and loan certificates of deposit; interest-bearing demand deposit accounts; standby letters of credit; or any other securities mutually agreed to by the Design/Builder and the STA.
- .4 The Design/Builder shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.
- .5 The escrow agreement shall be substantially similar to the form "Escrow Agreement for Security Deposits in Lieu of Retention" found in Public Contract Code Section 22300.

6.11 Payment and Completion.

6.11.1 The STA reserves the right to occupy all or any part of the Project prior to completion of the Work, upon written notice. In this event, the Design/Builder shall be relieved of responsibility to the STA for injury or damage that results from occupancy and use by the STA. If, by reason of the STA's occupancy, the premium for the Design/Builder's bodily injury and property damage insurance is increased, the STA will reimburse the Design/Builder for the additional amount necessarily incurred allocable to the area and the period of STA's occupancy up to the date of Final Completion.

6.11.2 The STA's occupancy does not constitute acceptance by the STA of the Work, or any portion of the Work, nor will it relieve the Design/Builder of responsibility for correcting defective Work or materials found at any time before Final Completion, as set forth in Paragraph 3.18, Guarantee, or during the guarantee period after the STA's acceptance, as set forth in Subparagraph 6.11.7, Final Payment. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the STA, then upon written request by the Design/Builder and by written consent from the STA, the guarantee period will commence to run for a building or buildings from the date of the STA's Beneficial Occupancy of a building or buildings.

6.11.3 Beneficial Occupancy. The STA may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and the City of Suisun City Fire Chief, Notice of Substantial Completion, and a Temporary Certificate of Occupancy is obtained. Such partial occupancy or use may commence whether or not the portion is complete, provided the STA and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and

commencement of warranties required by the Contract Documents. Immediately prior to such occupancy, the STA and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Work. Unless otherwise agreed, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

- 6.11.4 Substantial Completion: When the Work, or designated portion thereof, is sufficiently complete in accordance with the construction documents so that it can be used for its intended purpose, the Design/Builder and the STA shall collaboratively prepare a single comprehensive punch list. The Design/Builder shall then proceed promptly to complete and correct the 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.
- 6.11.5 Final Completion: Upon completion of the punch list the STA will inspect to determine whether the work has been completed. The Certificate of Final Completion shall be issued when all work is complete, and the STA Board has formally accepted the project.
- 6.11.6 Waiver of Claims. 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.
- 6.11.7 Final Payment. Upon execution of the Certificate of Final Completion, providing no stop notices have been filed which have not been discharged or bonded, all amounts unpaid under the Design Build Agreement will be paid to Design/Builder. The STA may withhold any reasonable sums payable to Design/Builder for the value of any Work, which the STA may have found defective and ordered to be replaced. Final Payment for withholdings will be made when the Work is completed, and/or defective Work replaced.
- . STA shall pay the remaining amount of the Contract Amount to the Design/Builder, after:
- .1 Acceptance and Close-out of the Work.
 - .2 Resolution of all stop notices.
 - .3 Execution by the Design/Builder of a release of all claims against the STA arising under the Design Build Agreement.
 - .4 Any other requirements spelled out in the Design Build Agreement.
- 6.11.8 The Design/Builder is required to pay subcontractors from whom a retention has been withheld within ten (10) days of receipt from the STA of retention proceeds.

6.11.9 The making of Final Payment by the STA shall constitute a waiver of claims by the STA, except those arising from (a) liens, claims, security interests 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; (c) the terms of warranties required by the Contract Documents; or (d) indemnities which shall survive completion of the Design Build Agreement.

6.12 Interest.

Payments due and unpaid under the Agreement shall bear interest pursuant to Public Contract Code section 20104.6 (relating to undisputed payments) and Section 7107 (relating to retentions).

ARTICLE 7 – SCHEDULE

7.1 Contract Time.

The “Contract Time” is the period from receipt by Design/Builder of written authorization to begin the project in the form of a Notice to Proceed from the STA, until the scheduled date of Final Completion of the Work. The Design/Builder agrees to design and manage the Work in accordance with the Project Milestone Schedule and approved Baseline Schedule.

7.2 Completion.

By executing this Design Build Agreement, the Design/Builder confirms that the Contract Time and Milestones, as stated in the Project Milestone Schedule (Exhibit A) of the Contract Documents, are of the essence of this Design Build Agreement. The Design/Builder confirms that the Contract Time and Milestones allow a reasonable period of time for achieving the Certificate(s) of Occupancy and Certificate(s) of Final Completion of the Work for the Project.

7.3 Schedules.

7.3.1 The Design/Builder shall be responsible for the development and maintenance of the Preliminary Baseline Schedule, the Baseline Schedule, the Progress Schedule and the Short-Term Schedule as described below. The Design/Builder shall submit, as indicated below, each schedule for the execution of the Work for the STA's review and response. The STA's review of and response to the schedule submissions shall not be construed as relieving the Design/Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Each schedule shall provide an interrelated means for defining activities involved in the planning, design, construction, and completion of the Project, their sequences and elapsed completion time from the date of the Notice to Proceed.

Each schedule shall utilize CPM (Critical Path Method) and shall be submitted in diagram and listed form. The computerized schedules shall permit the Design/Builder to obtain several print sorts that aid in identifying various activities

and requirements. Of particular importance would be critical activities that require information or reviews by STA, City of Suisun City, Master Architect, or the Construction Project Manager. The Design/Builder shall utilize _____ software (latest version) by _____ (or equivalent management solution), Inc.

The Design/Builder shall make its Authorized Schedule Representative available throughout the contract time and authorize that person to make scheduling commitments binding on the Design/Builder, as required to fulfill the scheduling requirements. The Design/Builder has submitted a preliminary schedule of the work (the "Proposal Schedule") in bar chart form with its proposal, incorporating all critical path milestones identified by the STA or known milestones and critical activities by the Design Builder, as well as the date for contract completion.

Design/Builder's representation that it could comply with the contract milestones, as demonstrated by its Proposal Schedule was an element of consideration in the STA's award of the contract. Design/Builder's Proposal Schedule, as submitted with its proposal and as modified during negotiations and accepted by the STA, will be utilized as an interim contract schedule for all purposes until the Design/Builder's submittal of an acceptable Preliminary Baseline Schedule.

7.3.2 Design/Builder's Preliminary Baseline Schedule. Within fourteen (14) calendar days from the Notice to Proceed, the Design/Builder shall submit a Preliminary Baseline Schedule to the Construction Project Manager. This schedule shall show, but is not limited to, the general plan for the work to be completed in the first ninety (90) calendar days of the Agreement. The Preliminary Baseline Schedule shall contain, but not be limited to:

- .1 dates established in the STA's Project Milestone Schedule;
- .2 dates to acquire, set up and occupy the field office;
- .3 dates of all mobilization activities on site, including notices and permits;
- .4 dates detailing the planned design schedule, including submittals and reviews;
- .5 anticipated dates for the start and completion of each stage of the design and construction process; and
- .6 established milestone dates representing important events in the first 90 days and 'major milestones' representing the completion of a group of activities in the first year.

The Preliminary Baseline Schedule shall be in the form of a CPM schedule. Design/Builder will provide all data files electronically on compact disc. The STA and Construction Project Manager will review the Design/Builder's Preliminary Baseline Schedule for conformance with the Milestone Schedule and interrelationships with other activities requiring coordination that may be outside

the scope of this agreement. Upon completion of the review, the STA may make recommendations to the Design/Builder as to adjustments to the Preliminary Baseline Schedule. These recommendations, if accepted by both the STA and Design/Builder, will be incorporated into the development of the Design/Builder's Baseline Schedule.

- 7.3.3 Design/Builder Baseline Schedule. Within sixty (60) calendar days after the Notice to Proceed, the Design/Builder, after an initial meeting with the STA, shall prepare a proposed Baseline Schedule for the Project. Recognizing that planning activities and design activities need time control to no less degree than construction activities, this schedule shall include, but not be limited to:
- .1 A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, resource-loading, cost loading and other information required for all design, pre-construction and construction activities. Each activity shall have a minimum of one predecessor and one successor, except for the first and last activities. The first activity will be denoted as "Notice to Proceed" and the last activity will be denoted as "Final Completion". Both activities shall be contract milestones.
 - .2 The CPM format shall include all Contract Milestones defined in this Agreement and/or by the Design/Builder's proposed preliminary schedule, as well as all engineering, fabrication and delivery dates required to support the milestones.
 - .3 Activities indicating the start and finish dates for project design, engineering, preparation of design development and construction documents, government agency plan check and STA agency document review.
 - .4 Activities to be integrated and shown in the CPM network shall include all milestones representing the Design/Builder's submittal dates and activities representing the STA's review period of each submittal (which review period shall in no case be scheduled for less than 10 working days); Design/Builder's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the job-site of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems.
 - .5 Activities showing the start and finish dates for all temporary works; all construction of mock-ups, and prototypes and/or samples.
 - .6 Activities showing start and finish dates of owner-furnished items and interface requirement dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.
 - .7 Activities showing start and finish of tenant programming (as appropriate), modular furniture, tenant improvement work and phased occupancy.
 - .8 Close-out activities.

- .9 The schedule shall consider all foreseeable factors or risks affecting, or which may affect the performance of the work, including historical and predicted weather conditions, applicable laws, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.
- .10 The Design/Builder shall not use any “float suppression” techniques such as preferential sequencing or logic, special lead/lag constraints or unjustifiably over-estimating activity durations in preparing its schedule. (“Finish no later” constraints will be permissible only for contract milestones.)
- .11 The Design/Builder shall attach a narrative report which explains assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment in the work.
- .12 The Design/Builder’s Authorized Schedule Representative shall formally present the detailed time-scaled CPM network for the duration of the contract time, demonstrating compliance with contract milestones and other requirements to the STA clearly showing the critical path(s) of the project (activities with 10 days of float or less) through completion.
- .13 Time units for all schedules shall be in calendar days.
- 7.3.4 The proposed Baseline Schedule shall be submitted and reviewed by the STA’s Construction Project Manager. Changes to the Baseline Schedule shall be reviewed with the STA’s Construction Project Manager prior to implementation. The STA, at its sole discretion, may allow or require the Design/Builder to more fully detail portions of the Baseline Schedule at a later date.

The STA’s Construction Project Manager shall notify the Design/Builder of acceptance or of any necessary changes to the CPM network within ten (10) working days from the formal presentation, after which the Design/Builder shall make the required changes and resubmit it for acceptance within five (5) working days certifying in writing that all information contained in it complies with the contract requirements. Upon notification by the STA of acceptance of the CPM network, the Design/Builder shall prepare computer plots (36” x 48”) and printouts (8 ½” x 11”), and complete its submission of the Baseline Schedule, which shall include the following:

1. Bar Charts, generated using the format template provided by the STA for:
 - (1) Contract Milestones only;
 - (2) Summary Level (sorted by craft/trade and area)
 - (3) Detail (sorted by Early Dates)

- (4) Detail (sorted by Responsibility), and
- .2 Reports, generated separately using the format template provided by the STA's Construction/Project Manager for:
 - (1) Float (sorted low to high), and:
 - (2) Resource histogram
 - (3) Cost Summary and Cash flow projection
- .3 Activities shall be coded to the activity code structure, provided to the Design/Builder by the Construction Project Manager in electronic format.
- .4 Provide all data files electronically on compact disc. Once accepted by the STA, this schedule shall become the Baseline Schedule for the Project from which all future Progress Schedules will be generated.
- 7.3.5 Design/Builder Progress Schedule. Each month, in conjunction with the application for payment process, the Design/Builder and STA's Construction Project Manager will conduct monthly reviews to determine: "planned" versus "actual" progress to date; compliance with contract submittal requirements, contract milestones and accepted contract schedule; and determination of any changes to the work plan or implementation which must be made by the Design/Builder to comply with the contract schedule. The monthly schedule review shall include, at a minimum:
 - .1 Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.
 - .2 Review of "Planned" versus "Actual" work force allocations and progress for the preceding month.
 - .3 Reviews of revisions added or deleted work and how those activities are being integrated into the Design/Builder's work plan.
 - .4 Review of Design/Builder's interface and coordination with other work on the Project.
 - .5 Review of all impacts to the work during the preceding month and to date, Design/Builder evaluation of those impacts and any recovery plans or remedial actions required to comply with the contract schedule.

Following the review of the above and all other information relevant to the progress of the work, the Design/Builder shall adjust its work plan as required to insure compliance with the contract schedule. The requirement for additional work force allocations, additional shifts, overtime, etc., will not entitle Design/Builder to additional compensation except to the extent expressly provided for by this Agreement or change order. The contract schedule shall be

updated and submitted monthly for the Construction Project Manager's review concurrent with each payment application submitted by the Design/Builder. The schedule update shall incorporate actual status to date and shall include the following:

- .1 Computer plotted time-scaled CPM network (36" x 48") in color;
- .2 Bar Charts, generated separately using the format template provide by the STA for:
 - (1) Contract Milestones only (Baseline vs. forecast);
 - (2) Summary Level (sorted by craft/trade and area);
 - (3) Detail (sorted by Early Dates);
 - (4) Detail (sorted by Responsibility), and;
- .3 Reports, generated separately using the format template provided by the STA for:
 - (1) Variance (Baseline vs. forecast);
 - (2) Progress Curves (Baseline vs. Earned/Forecast);
 - (3) Float (sorted low to high); and
 - (4) Resource histogram
- .4 Provide all data files electronically by diskette and in hard copy.

The Construction Project Manager will update the Master Schedule based on information provided in the Progress Schedule and distribute to the appropriate parties. The Progress Schedule will be the basis for the Short-Term Schedule.

7.3.6 Design/Builder Short-Term Schedule. The Short-Term Schedule shall address activities over an eight-week period or otherwise in such duration agreed to by the STA. This schedule shall be maintained on a weekly basis and used as a means of compensating for negative effects of as many variables as possible. It shall be directly derived and electronically tied to the Master Schedule to enable rapid impacts of short-term schedule changes on the overall project time line.

The Short-Term Schedule is a dynamic schedule whose activities can vary in both duration and precedence, but only between two sequential milestones as described in the accepted Baseline Schedule. Upon the STA's acceptance of the Baseline Schedule, the Design/Builder shall begin providing an updated Short-Term Schedule for all participants at each weekly progress meeting or on a weekly basis if the STA decides weekly meetings are not required. The interval format shall be a seven-(7) week projection that shall include one (1) week prior, the week submitted, and six (6) weeks thereafter.

7.3.7 Schedule Revisions. The implementation of revised schedule logic and/or activity duration estimates for updating the contract schedule or other interim schedule whether furnished by the Design/Builder or the STA do not constitute an extension of contract time, relaxation of contract milestones or basis for a change

to the contract sum. Such revisions are for the purpose of maintaining the accuracy of the contract schedule's representation of the work to be accomplished and to present best duration estimates for work yet to be performed. In updating the contract schedule, the Design/Builder shall make no modifications to Activity ID numbers in the accepted contract schedule, schedule calculation rules/criteria, or the Activity Coding Structure provided by the STA's Construction Project Manager without the explicit written permission of the STA, which permission the STA may withhold at its sole discretion.

7.3.8 Graphical Information. The Design/Builder shall prepare professional-quality graphical presentations of such scheduling and/or sequencing information as may be required to communicate its work plans or to effectively implement its coordination obligations under the contract.

7.3.9 STA's Project Master Schedule. The purpose of the Master Schedule is to combine, coordinate, and track schedules produced by the Design/Builder and other Project team members throughout the course of the Project. The Master Schedule will also include milestone dates and the Design/Builder's Baseline Schedule, and shall be utilized by the STA and the Design/Builder to identify any coordination issues and/or conflicts with other Project team members under separate contract. The Construction Project Manager shall be responsible for maintaining, updating and distributing the Master Schedule. The Master Milestone Schedule is shown in Exhibit A.

7.4 Float time.

All float time contained in the Work shall be owned by the project. Under no circumstances shall Design/Builder be entitled to maintain a claim against the STA for Design/Builder's failure to achieve Final Completion on a date earlier than that set forth on said Baseline Project Milestone Schedule as the same may be adjusted by approved Change Orders.

7.5 Compensable Event.

7.5.1 Notwithstanding anything in this Design Build Agreement to the contrary, in the event of a "Compensable Event," as hereinafter defined, Design/Builder shall notify the STA in writing within fourteen (14) days, setting forth all of the facts and circumstances relating to the Compensable Event, the expected financial impact on the Contract Amount, and any delays to the Contract Time. In the event the STA agrees that it is a Compensable Event, the STA shall have the option of either:

- (a) adjusting the Contract Time by the delay occasioned by the Compensable Event, if any, and increasing the Contract Amount by the financial impact of the Compensable Event, if any, or
- (b) reducing the scope of the Project so that the Contract Amount and/or Contract Time will not be exceeded. Design/Builder shall cooperate with the STA and provide information at no additional cost to the STA, at the

STA's request, to identify appropriate program modifications to achieve the desired effect.

"Compensable Event" shall mean any one of the following:

- .1 material acts or omissions of the STA's agents or contractors (other than Design/Builder and/or its subcontractors) which are inconsistent with the terms of the Contract Documents and result in any delay or cost increase to the Project that results in an extension of the Contract Time;
- .2 a change in any applicable laws, ordinances, rules, codes, regulation, and lawful orders of governmental authorities relating to the Project after the date of execution of this Agreement by the Design/Builder, which results in a delay or cost increase;
- .3 acts of God events, as defined in Article 1;
- .4 labor disputes, strikes, lockouts, work slow-downs or work stoppages not resulting from Design/Builder's failure to comply with any applicable labor agreement.
- .5 Unforeseen conditions

7.6 Costs of Compensable Event.

The increased costs occasioned by a Compensable Event shall be limited solely to the direct costs of Design/Builder and shall not include any consequential damages or lost profits. To the extent a Compensable Event increases the time of performance of either the design or the construction, an extension to the Contract Time shall be granted, Notwithstanding the forgoing, if the Compensable Event is of the type described by clauses .3 immediately above, Design/Builder shall not be entitled to recovery of any costs for the first thirty (30) days of delay (in the aggregate),, and shall be entitled to file a claim for recovery of costs thereafter, which claim shall be limited to general conditions overhead costs only.

7.7 Owner's Discretionary Action for Early Final Acceptance.

As an incentive, the STA agrees to pay the Design/Builder a sum not to exceed \$_____ if the Design/Builder receives Final Acceptance by _____, or such date as amended by the parties, and manages the project budget to the STA's satisfaction resulting in savings to STA's project contingency. The STA may elect to pay the entire sum or any portion thereof at its sole discretion and only out of the Project's Contingency. STA shall have no obligation to appropriate additional funds for this incentive.

7.8 Liquidated Damages.

The STA and Design/Builder agree that the STA will suffer economic damage should the Design/Builder fail to complete the Project in the time required as shown in Exhibit A. In

the event that there is a delayed occupancy, the result of such delay may require prospective tenants to rent temporary space or extend existing leases/occupancies, plus incur additional administrative costs for the Project. The STA has determined that the estimated cost of such damages is _____ dollars (\$_____.00) per day of a delay in achieving beneficial occupancy and a total of _____ thousand dollars (\$_____.00) per day of delay in achieving Final Acceptance for the Project, by the date indicated in the baseline Schedule shown in Exhibit A. Design/Builder agrees that this is a reasonable estimate of such costs.

The STA and Design/Builder agree that such amount shall be treated as Liquidated Damages pursuant to Civil Code section 1671, and that Design/Builder shall accordingly pay the STA the sum of _____ dollars (\$_____.00) per day of a delay in achieving beneficial occupancy and a total of _____ dollars (\$_____.00) for each day by which Final Acceptance is delayed beyond the Contract Time set forth in the baseline Project Schedule, whether the STA's actual damages for such occupancy delays are more or less than the liquidated sum.

However, if the STA has taken Beneficial Occupancy of any portion of the Project, said liquidated sum for the Certificate of Final Completion shall be reduced proportionately. For example, if the STA takes 10% Beneficial Occupancy of the Project, the amount of the Liquidated Damages shall be reduced by 10%.

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy STA may have under this Agreement for Design/Builder's breach of this Agreement, including without limitation, STA's right to terminate this Agreement, and STA shall be entitled in its discretion to recover actual damages caused by Design/Builder's failure to perform its obligations under this Agreement. However, STA will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

ARTICLE 8 – CHANGES IN THE WORK

8.1 General.

8.1.1 The STA may order changes, including but not limited to, revisions to the Construction Documents, performance of extra work, and the elimination of work. Orders for such changes will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Design/Builder shall notify the STA for their evaluation whenever it appears a change is necessary. Contract Time and Contract Amount will be adjusted by written Change Order for changes materially increasing or decreasing the time for performance or cost.

8.1.2 The Design/Builder, when ordered by the STA, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the STA records as specified in this Agreement.

8.1.3 If the Design/Builder fails to provide such records, the STA's records will be used for the purpose of adjustment in Contract Time and Contract Amount.

8.2 Change Order.

8.2.1 Methods used in determining the value of a Change Order shall be based on one of the following methods:

- .1 By mutual acceptance of a lump sum increase or decrease in costs. Upon the STA's written request, the Design/Builder shall furnish a detailed estimate of increase or decrease in costs, together with cost breakdowns of labor, materials and equipment and other support data within the time specified in such request. Cost breakdowns shall include but are not limited to: hourly labor rates and hours; materials quantities and unit costs; and equipment hourly rates and hours, as an example. The Design/Builder shall be responsible for any additional costs caused by the Design/Builder's failure to provide the estimate within the time specified.
- .2 By the STA, based on the STA's estimate of increase or decrease in the costs.
- .3 By the STA, whether negotiations are initiated as provided in this Agreement.
- .4 By actual and necessary costs, as determined by the STA, based on records. Beginning with the first day and at the end of each day, the Design/Builder shall furnish to the STA detailed hourly records for labor, construction equipment, and services; and itemized records of materials and equipment used that day in performance of the changes. Such records shall be in a format approved by the STA. Such records shall be signed by the Design/Builder and verified by the STA.
- .5 By Unit Prices stated in the Contract Documents, or subsequently agreed upon.
- .6 By a manner agreed upon by the STA and the Design/Builder.

8.2.2 Allowable Costs. If an increase or decrease cannot be agreed to as set forth in Clauses 8.2.1.1 through 8.2.1.6, above, the method for determining the value of the Change Order shall be computed in the following manner:

1. Mark-Ups for Added Work.
 - .a For work performed by the Design/Builder in the amount equal to the direct cost (as defined herein) for the work plus fifteen percent (15%) of the direct costs for overhead and profit.
 - .b For work performed by Subcontractor in the amount equal to the direct cost (as defined herein) for the work plus twenty (20%) of the direct cost for overhead and profit. (Suggested Breakdown: 15% to the Subcontractor, 5% to the Design/Builder.)
 - .c For work performed by a Sub-subcontractor (any tier), in the amount equal to the direct cost (as defined herein) for the work plus twenty-five

percent (25%) of the direct cost for overhead and profit. (Breakdown: fifteen percent (15%) for Sub-subcontractor, five (5%) to Subcontractor and five (5%) to Design/Builder.)

- .d For work performed by the Architect of Record, in the amount equal to the direct cost of services plus the cost of Design/Builder's staff that is not otherwise assigned to the Project or for whom the Design/Builder is not otherwise receiving compensation for services pursuant to this Agreement. Design/Builder will submit standard hourly rates for the Design/Build team to the STA. Upon acceptance by the STA of the rates, these rates will be incorporated into the Agreement as if fully set forth herein. Costs will be calculated in accordance with these hourly rates.
- .e In no case will the total markups be greater than twenty-five percent (25%) of the direct cost notwithstanding the number of Contract tiers actually existing.
- .f For deleted work the credit markup shall be ten percent (10%) of the direct cost or the agreed upon estimate thereof, unless otherwise agreed to by both parties. The markup shall include profit, small tools, cleanup, bonds, engineering, supervision, warranties job-site overhead and Home Office overhead. No markup will be allowed on taxes. (See the following paragraphs for more detailed exceptions.)

8.2.3 Direct Costs:

.1 Labor

Cost for labor shall include any employer payments to or on behalf of the workmen for health, welfare, pension, vacation and similar purposes. Labor rates will not be recognized when more than those prevailing in the locality and time the work is being performed. The costs for all supervision including Project Manager, General Superintendents and Foremen will be included in the markups established by the Contract. The only exception to this will be working foremen who perform actual manual labor. No labor charges will be accepted for engineering or proposal preparation.

These costs will be included in the markups established by the Contract. A breakdown of the payroll rates for each trade will be provided for all Change Orders fifteen (15) days after Notice to Proceed including the base rate, benefits, payroll taxes and insurance. Overtime and premium time pricing will only be allowed for labor which, based on mutual agreement, shall be performed after normal working hours. Unless otherwise agreed to by both parties, mechanical and electrical changes will be negotiated using productivity factors no greater than those listed in the following manuals:

- a. Electrical: NECA Column 1 (Normal), Current Edition at time of construction.
- b. Plumbing and Piping: MCAA Discounted 30%.

- c. HVAC: National Mechanical Estimator by Ottaviano, Current Edition at time of construction.

.2 Material

The STA shall pay only the actual cost to the Design/Builder for the materials directly required for the performance of the changed work. Such cost of materials may include the cost of transportation and no delivery charges will be allowed unless the delivery is specifically for the changed work. If a trade discount by an actual supplier is available to the Design/Builder, it shall be credited to the STA. If the materials are obtained from a supplier or source owned wholly by or in part by the Design/Builder, payment thereof will not exceed the current wholesale price for the materials. The term "trade discount" includes the concept of cash discounting.

If in the opinion of the STA, the cost of the materials is excessive or if the Design/Builder fails to furnish satisfactory evidence of a cost to him other from the actual supplier, then, in either case, the cost of the materials shall be deemed to be the lowest current wholesale price at which similar materials are available in the quantities required. The STA reserves the right to furnish such materials, as it deems advisable and the Design/Builder shall have no claims for cost or profits on materials furnished by the STA.

3. Construction Equipment

The STA shall pay only the actual cost to the Design/Builder for the use of equipment directly required in the performance of the changed work. In computing the hourly rental of equipment, any time less than thirty-(30) minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to the work for rental of such equipment and to return it to the source.

No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment and no payment will be made therefore.

The rental rate for equipment will not exceed that as recommended by the lower of the rental rates established by distributors or equipment rental agencies or as contained in the Association of Equipment Distributors (AED) book in the locality for performance of the changes. For equipment owned, furnished, or rented by the Design/Builder no cost thereof shall be recognized in excess of the rental rates established by distributors or equipment rental agencies and/or the AED or any tier book in the locality for performance of the changes. The amount to be paid to the Design/Builder for the use of equipment as set forth above shall

constitute full compensation to the Design/Builder for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs to the Design/Builder incidental to the use of the equipment.

8.3 Acceptance of Change Orders.

The Design/Builder's written acceptance of a Change Order shall constitute final and binding agreement to the provisions of it and a waiver of all claims in connection with it, whether direct, indirect, or consequential in nature.

8.4 Effect on Sureties.

All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of surety(s).

8.5 Covering and Uncovering of Work.

8.5.1 When inspections are required by the Contract Documents the Design/Builder shall notify the STA two (2) working days prior to covering any work.

8.5.2 If a portion of the Work is covered prior to the STA's review, it shall, if requested in writing by the STA, be uncovered for the STA's observation and replaced at the Design/Builder's expense without change in the Contract Time.

8.6 Correction of Work.

8.6.1 The Design/Builder shall promptly correct work rejected by the STA or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed. The Design/Builder shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the STA's services and expenses made necessary thereby.

8.6.2 Notwithstanding Paragraph 3.18, Guarantee, in the event of an emergency constituting an immediate hazard to the health or safety of STA employees, property, or licensees, the STA may undertake, at the Design/Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the Design/Builder not being in accordance with requirements of the Contract Documents.

8.6.3 The Design/Builder shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents, and are neither corrected by the Design/Builder nor accepted by the STA.

8.6.4 If the Design/Builder fails to correct nonconforming work, as per Paragraph 3.18, Guarantee, the STA may correct the nonconforming work in accordance with

Paragraph 9.3, The STA Remedies. If the Design/Builder does not proceed with correction of such nonconforming work, within such time fixed by written notice from the STA, the STA may remove and store the salvable materials articles and/or equipment at the Design/Builder's expense.

If the Design/Builder does not pay all costs of such removal and storage within fourteen (14) days after written notice, the STA may, upon fourteen (14) additional days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds, after deducting costs and damages that would have been borne by the Design/Builder, including compensation for the STA's services and expenses made necessary by it. If the proceeds of a sale do not cover all costs that the Design/Builder would have borne, the Contract Amount shall be reduced by the deficiency. If payments then or thereafter due the Design/Builder are not sufficient to cover such amount, the Design/Builder shall pay the difference to the STA.

8.6.5 The Design/Builder shall bear the cost of correcting destroyed or damaged work executed by the STA or separate contractors, whether fully completed or partially completed, which is caused by the Design/Builder's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

8.6.6 Nothing contained in this Paragraph 8.6, Correction of Work, shall be construed to establish a period of limitation with respect to other obligations that the Design/Builder might have in the Contract Documents. Establishment of the time period of one (1) year, as described in Paragraph 3.18, Guarantee, 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 requirements of 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.

8.7 Acceptance of Nonconforming Work.

If the STA prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the STA may do so instead of requiring its correction and/or removal, in which case the Contract Amount will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment to the Design/Builder has been made.

ARTICLE 9 – EVENTS OF DEFAULT AND TERMINATION

9.1 STA Events of Default.

9.1.1 The following shall be considered the STA Events of Default:

.1 If the Work is stopped for a period of one hundred eighty (180) consecutive days through no fault of the Design/Builder for any of the following reasons:

- a. The issuance of an order of a court or other public authority having jurisdiction;
- b. An act of government, such as a declaration of national emergency, making material unavailable;
- c. Non-payment by the county for approved design and approved work-in-place after 60 days of a properly submitted and approved invoice.

9.2 Design/Builder Events of Default.

9.2.1 The following shall be considered Design/Builder Events of Default:

- .1 If Design/Builder 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 STA, to commence a cure to correct such failure or neglect and/or thereafter diligently pursue such cure to completion; or
- .2 If Design/Builder materially breaches this Agreement after notice from the STA and fails, after seven (7) days' notice from the STA, to commence a cure to correct such breach and/or diligently pursue such cure to completion; or
- .3 If a custodian, trustee or receiver is appointed for Design/Builder, or if 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 if 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 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; or
- .4 If the Design/Builder changes its corporate identity in a manner different from that described in this Agreement due to merger, takeover, offer, sale or exchange of interest therein, dissolution, whether by operation of law or otherwise, and the change in interest is not approved in advance in writing by the STA. In the event such a change does not have the effect of diminishing or impairing the Design/Builder's ability to perform the Work or its financial capabilities, such approval shall not be unreasonably withheld. The STA shall have at least thirty (30) days' notice of such a change.

9.3 STA Remedies.

- 9.3.1 Without prejudice to any other rights or remedies of the STA, the following remedies shall be available to the STA in the case of a Design/Builder event of default:

- .1 The STA shall have the right to terminate this Agreement upon an additional seven (7) days' written notice to Design/Builder, provided that Design/Builder has not commenced a cure within such seven (7) day period.
- .2 The STA may take possession of the Project site and of all materials, equipment, tools and construction equipment on site owned by Design/Builder.
- .3 The STA may accept assignment of the construction subcontract and/or design subcontract.
- .4 The STA may finish the Work by whatever reasonable method the STA may deem expedient.
- .5 The STA may seek such remedies as may be available under existing law.

9.4 Termination.

When the STA terminates this Design Build Agreement as provided above, Design/Builder shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds costs incurred by the STA in finishing the Work, then such excess shall be paid to Design/Builder. However, if such costs exceed the unpaid balance of the Contract Amount, then Design/Builder shall pay the difference to the STA.

9.5 Design/Builder Remedies.

The following remedy shall be available to Design/Builder in the case of the STA event of default: Design/Builder may, upon seven (7) days' additional written notice to the STA, terminate this Agreement and recover from the STA payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and services rendered, including reasonable overhead and profit.

9.6 Multiple Remedies.

Except as otherwise provided in this Design Build Agreement, no remedy under the terms of this Design Build 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. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any event of default or acquiescence to it, and every such right and power may be exercised from time to time as often may be deemed expedient.

9.7 Termination for Convenience.

The STA may terminate this Design Build Agreement at any time for convenience if the STA determines such termination is in the best interests of the STA upon sixty (60) days' advance notice. In the event the STA terminates this Agreement for convenience and subsequently rebids or otherwise completes the Project, then Design/Builder shall be

entitled to recover lost profits in addition to other costs recoverable under this Agreement as allowable under law.

Such Title Insurance policies and endorsements shall be at the sole cost and expense of the Design/Builder and shall insure that the Project is free of all liens and encumbrances. Any liens or charges encumbering the Project, or which are claimed to encumber the Project, other than those placed by or agreed upon by the STA, shall be offset against whatever amount is determined to be owed to the Design/Builder.

9.8 Termination Payment.

In the event the STA terminates this Design Build Agreement for convenience as set forth above, the STA 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, including, but not limited to, any penalties payable to subcontractors for early termination, plus reasonable overhead and profit. All funds due pursuant to this Section, including unpaid retainage, shall be released within thirty (30) days of termination of the Design Build Agreement for convenience, subject to the provisions of Paragraph 9.7, Termination for Convenience.

9.9 Property Rights.

In the event of termination, all studies, reports, special forms, schedules, designs and any other written information pertaining to the Project shall become the STA's property as provided in this Agreement.

9.10 Suspension of Work.

9.10.1 STA may order Design/Builder, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that the STA determines appropriate for the convenience of the STA.

9.10.2 If the performance of all or any part of the Work is for any period of time, suspended, delayed, or interrupted (a) by an act of the STA in the administration of the Design Build Agreement, or (b) by the STA's failure to act within the time specified in the Design Build Agreement (or within a reasonable time if not specified), or (c) for other reasons which Design/Builder is entitled to claim delay under the Agreement, Design/Builder shall provide notice according to the Agreement.

9.10.3 Design/Builder shall be entitled to an increase in the Contract Amount and the Contract Time to the extent the cost of performance of the Design Build Agreement or the time therefore is increased as a result of suspension, delay, or interruption by the STA or as otherwise provided in the Contract Documents. However, no adjustments shall be made under this Article for any suspension, delay, or interruption to the extent that Design/Builder's performance would have been so suspended, delayed, or interrupted by any other cause for which Design/Builder would not be entitled to an increase in the Contract Amount or in the Contract Time.

9.11 Non-Compliance with Design Build Agreement Requirements.

In the event the Design/Builder, after receiving written notice from the STA of non-compliance with any requirement of the Design Build Agreement, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the STA shall have the right to order Design/Builder to stop all Work in the area affected until Design/Builder has complied with or has initiated such action as may be appropriate to comply within a reasonable period of time. Design/Builder will not be entitled to any extension of Contract Time or Contract Amount for any costs incurred as a result of being ordered to stop Work for such cause.

ARTICLE 10 – DISPUTES AND CLAIMS

10.1 Dispute and Claim Procedures.

10.1.1 When the Design/Builder and the STA fail to agree whether or not any work is within the scope of Contract Documents, the Design/Builder shall immediately perform such work upon receipt of a written notice to do so by the STA. Within fourteen (14) days after receipt of such notice, the Design/Builder may submit a written protest to the STA, specifying in detail in what particular Contract Documents were exceeded, and approximate change in cost resulting so that the STA will have notice of a potential claim.

Failure to submit a protest within the specified period shall constitute a waiver of any and all rights to an adjustment in Contract Amount and Contract Time due to such work, and the Design/Builder thereafter shall not be entitled to adjustment of Contract Amount or Contract Time. For any such work that is found to exceed Contract Documents, there shall be an adjustment in Contract Amount and Contract Time on same basis as any other change in the Work.

- .1 The Design/Builder shall provide supporting data and shall provide and maintain records of costs attributable to disputes in similar manner as for Change Orders in Article 8, Changes in the Work.
- .2 The STA and the Design/Builder will make every reasonable effort to resolve the dispute prior to proceeding to the next step.
- .3 Either the STA or the Design/Builder may call a special meeting for resolving the dispute. Such a meeting will be held within seven (7) days of written request of it.
- .4 If the dispute as to the Contract Documents has not been resolved, the Design/Builder shall, within fourteen (14) days after the special meeting, take one or more of the following actions:
 - .a submit additional supporting data requested by the STA of Solano;
 - .b modify the initial dispute;

- .c notify the STA that the initial dispute stands as is; or
 - .d withdraw the dispute. Once withdrawn, the dispute cannot be reopened by the Design/Builder.
- .5 If the dispute has not been resolved within seven (7) days after the Design/Builder's action in response to Clause 10.1.1.4, another meeting may be scheduled, at the STA's option, with senior management personnel of the STA and the Design/Builder. The purpose of this meeting is to resolve the dispute prior to proceeding to the action under Subparagraph 10.1.2, Dispute and Claim Procedures.
- .6 Any dispute not resolved by the above meetings may be settled by arbitration in accordance with the American Arbitration Association Construction Industry Rules provided both the STA and the Design/Builder agree in writing. Either party may initiate arbitration by filing a demand for arbitration made in compliance with the requirements of the applicable statutes and regulations referenced below.

The demand for arbitration shall state the nature of the dispute, the amount involved, if any, and the remedy sought. Arbitration shall be in accordance with Public Contract Code and its implementing regulations. Arbitration shall be in Fairfield, California, unless otherwise agreed to by the parties. The demand for arbitration on a claim by the Design/Builder shall be made no later than ninety (90) days after the date of service on the Design/Builder of the final written decision made by the STA.

10.1.2 If a dispute has not been resolved at the time of the STA's proposed Final Payment, the Design/Builder shall submit within thirty (30) days a claim along with detailed documentation required by Subparagraph 10.1.1, Dispute and Claim Procedures, for the STA's consideration. The STA will render a written decision to the Design/Builder relative to the claim. The STA's written decision shall be final and binding on the party(ies). The STA may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. If there appears to be a possibility of a Design/Builder's default, the STA may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

10.1.3 Maintenance of Existence. Design/Builder covenants that it will remain in existence during the term of the Design Build Agreement and for a period of five (5) years after Final Completion of the Project (the "Corporate Maintenance Period"). The purpose for which Design/Builder shall remain in existence during the Corporate Maintenance Period is to assure the STA that Design/Builder will be able, during the Corporate Maintenance Period, to address and/or pay claims by the STA against the Design/Builder if the STA deems the Design/Builder to be insufficiently capitalized to be able, on its own to carry out its obligations hereunder (financial or otherwise). In the event a guarantee of the Design/Builder is required by the STA, from the date of this Design Build Agreement and during the remainder of the Corporate Maintenance Period, Design/Builder agrees to

execute such guarantee as necessary to ensure performance of its obligations pursuant to this Paragraph.

ARTICLE 11 – PROTECTION OF PERSONS AND PROPERTY

11.1 Safety of Persons and Property.

11.1.1 The Design/Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The STA shall have no responsibility for initiating, maintaining and supervising safety of persons and property.

11.1.2 The Design/Builder shall take precautions for safety and provide protection to prevent damage, injury or loss to:

- .1 Employees working under the Agreement and other persons who may be affected by it;
- .2 The Work and materials and equipment to be incorporated in it, whether in storage on or off the Project site, under care, custody or control of the Design/Builder or the Design/Builder's subcontractors or sub-subcontractors; and
- .3 Other property at the Project site, or adjacent to it, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during the course of construction.

11.1.3 The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.

11.1.4 The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Contract Documents, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the STA, other owners (other than the STA) and users of adjacent sites and utilities.

11.1.5 The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work. The Design/Builder shall employ properly qualified personnel for supervision of same.

11.1.6 The Design/Builder shall remedy damage and loss to property referred to in Clauses 11.1.2.2 and 11.1.2.3 caused in whole or in part by the Design/Builder, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Builder is responsible under Clauses 11.1.2.2 and 11.1.2.3. The

foregoing obligations of the Design Builder are in addition to the Design/Builder's obligations under Paragraph 12.3, Indemnification.

11.1.7 The Design/Builder shall not permit any part of the Work or Project site to be loaded so as to endanger its safety.

11.1.8 When conditions of the Work, in the judgment of the STA, present unreasonable risk of injury or death to persons or property damage, the STA, may direct the Design/Builder, at the Design/Builder's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.

11.1.9 The Design/Builder, at the Design/Builder's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

11.2 Emergencies.

In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Design/Builder because of an emergency will be reviewed as provided in Article 8, Changes in the Work.

ARTICLE 12 – INSURANCE, BONDS, AND INDEMNIFICATION

12.1 Insurance.

12.1.1 Design/Builder shall not commence work under this Contract until all insurance has been obtained that is required under this section and such insurance has been verified by the STA, nor shall Design/Builder allow any Subcontractor to commence work on its Contract until all similar insurance required of the Subcontractor has been so obtained and approved. Design/Builder shall furnish the STA with three (3) copies of each required certificate of insurance, as provided below. Design/Builder shall have the following insurance coverage:

a. Workers' Compensation Insurance and Employer's Liability Insurance.

Design/Builder shall maintain during the life of the Contract Workers' Compensation Insurance and Employer's Liability Insurance for all its employees employed on the project as described herein. Said insurance shall comply with the following:

- i. Workers' Compensation Insurance in compliance with the laws of the State of California and any applicable federal statutes.
- ii. Employers liability insurance of not less than one million dollars (\$1,000,000) each accident and one million dollars (\$1,000,000) each employee.

In signing the Contract, Design/Builder shall make the following certification, required by Section 1861 of the Labor Law: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Automobile and General Liability. Design/Builder shall have throughout the term of this contract policies of liability insurance covering automobile and general liability as follows:
- i. Owned/non-owned and hired automobile liability insurance with primary limits for bodily injury and property damage liability of not less than one million dollars (\$1,000,000) per accident. Umbrella and/or excess liability limits of not less than five million (\$5,000,000) per accident.
 - ii. Commercial general liability and/or umbrella excess liability insurance providing coverage on an occurrence basis and with limits of not less than ten million (\$10,000,000) each occurrence and annual aggregate for bodily injury and property damage liability combined including:
 - 1) Premises and operations liability coverage;
 - 2) Owner's and Design/Builder's protective liability coverage;
 - 3) Broad form property damage liability coverage including completed operations;
 - 4) Blanket contractual liability coverage;
 - 5) Deletion of any limitations relating to liability arising out of explosion, collapse or underground hazards;
 - 6) Personal and advertising injury liability coverage;
 - 7) For excavation and foundations, deletion of any limitation on coverage for bodily injury or property damage arising out of subsidence of soil or earth movement; and
 - 8) For demolition and/or hazardous materials removal, deletion of any limitation regarding asbestos and/or lead risk exposure.
 - 9) An endorsement specifying that policy aggregate limits apply separately to the project covered by this contract;
 - 10) Errors & Omissions
 - 11) Products and Completed Operations including five (5) year extension endorsement

- 12) Occurrence Definition to include "Assault and battery committed by, at the direction of or on behalf of any insured for the purpose of protecting the person or property of any insured or of others shall be deemed to be an occurrence."
- 13) Extended Personal Injury definition to include alienation of affections, discrimination, or humiliation.
- 14) Bodily Injury Definition to include mental anguish, shock, mental injury, humiliation, sickness, or disease sustained by a person, including death resulting from any of these at any time.
- 15) Exclusion Property Damage to the Insured's Work to read: "Property damage" to that particular part of "your work" that is defective or actively malfunctions. This exclusion applies only to the "products-completed operation" hazard. It does not apply if the damaged work or the work out of which the damage arises was performed on Design/Builder's behalf by a subcontractor.
- 16) Contractual Liability – Municipal Work: The phrase "any other contract or agreement pertaining to your business," as included in the definition of an insured contract, includes an indemnification of a municipality required by ordinance and in connection with work performed for the municipality.
- 17) Professional Liability Insurance. Upon execution of this contract, Design/Builder shall obtain professional liability insurance with limits of at least five million dollars (\$5,000,000) per claim and aggregate which shall cover claims resulting from professional errors and omissions of Design/Builder and any of its consultants in connection with the work provided such claims arise during the period commencing upon the preparation of the construction documents and ending five (5) years following Final completion. Such insurance shall be in form reasonably acceptable to the STA's Risk Manager.
- 18) Builders' Risk Insurance/Installation Floater. Design/Builder shall have until contract completion "all risk" builders' risk property insurance, jointly in the names of the STA and the Design/Builder, payable as their respective interest may appear, such insurance all times to be of sufficient amount to cover fully all loss or damage to the work under this Contract, at 100% replacement cost. Design/Builder's responsibility for earthquake coverage shall be in accordance with Public Contract Code Section 7105. Such insurance shall be in a form acceptable to the STA's Risk Manager and shall include coverage for machinery during testing.

- 19) Subcontractor Insurance. Design/Builder shall cause all subcontractors engaged to perform work required of Design/Builder pursuant to this Contract to have Workers' Compensation, Commercial General Liability/Umbrella and/or Excess Liability, and Automobile Insurance in a form and amount deemed appropriate by the Design/Builder for work performed under this Contract.

12.2 Indemnification.

12.2.1 The Design/Builder will indemnify and defend the STA and its respective officers, elective and appointive Board, employees and consultants (including the Master Architect) against all loss, expense (including, but not limited to, attorneys' fees and court costs), damage, injury, liability, causes of action or claims of any kind or character (collectively "claims" and individually a "claim"), provided that such claim or claims is/are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself for claims not covered by insurance which is required under this Agreement) including loss of use resulting there from (except loss of use attributable to a claim otherwise insured as provided under this Agreement), in any way arising out of this Agreement or the Work, including but not limited to the acts or omissions of the Design/Builder, its partners, officers, directors, employees, agents, licensees, invitees, consultants, vendors, or subcontractors of any tier (collectively the "Design/Builder"). Such indemnification shall include, but not be limited to any claim arising from or caused by:

- (i) any defect in the construction documents, or the design or construction of or materials used in the Work or in any machine, equipment, appliance, or other item of personal property installed or located therein;
- (ii) any defect in the preparation of soils or in the design and accomplishment of grading;
- (iii) any violation or alleged violation by any member of the Design/Builder of any law existing as of the date of this Agreement or hereafter enacted (provided that with respect to laws enacted after the date of the Design Build Agreement, the Design/Builder may be entitled to an adjustment in the Contract Sum and/or Contract Time as provided in the Design Build Agreement);
- (iv) any negligent acts or omissions or other tortious conduct of the Design/Builder or any member of the Design/Builder;
- (v) any accident on the job site or other casualty thereon;
- (vi) any other cause whatsoever in connection with the Design/Builder's use of or activities on the job site or the Design/Builder's performance under this Agreement; and/or

(vii) the inaccuracy or incorrectness of any representation or warranty of the Design/Builder to the STA under this Agreement. Notwithstanding the foregoing, the obligations of the Design/Builder in this paragraph are intended to apply only to third party claims arising out of the Agreement or the Work, and not to property damage to the STA, which damage is treated elsewhere in this Agreement.

.1 Subject to Paragraph 3.20, the Design/Builder will save, keep, and hold harmless the STA and its respective officers, elective and appointive Board, employees and consultants (including the Master Architect) from all claims by reason of, or in the course of the performance of, said Work, by reason of any infringement or alleged infringement of the patent rights, copyrights, and/or trademarks of any person or persons, firm, or corporation in consequence of the use in, on or about said Work, of any article or material supplied or installed under this Agreement (except to the extent such article or material was directed to be supplied or installed by the STA).

Neither the STA and its respective officers, elective and appointive Board, employees and consultants (including the Master Architect) shall be liable for any loss or damage that may happen to the Work, or any part of it; nor to any of the materials or other items used or employed in performing the Work; nor for injury to any person or persons, either workers or the public, for damage to property from any cause which might have been prevented by the Design/Builder, or the Design/Builder's employees or agents, against all of which injuries or damages the Design/Builder must properly guard.

The Design/Builder shall indemnify and hold harmless the STA and its respective officers, elective and appointive Board, employees and consultants (including the Master Architect), from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Design/Builder, the Design/Builder's employees or agents, in construction of the Work, or by or in consequence of the Design/Builder's failure to properly guard the same, or by or as a result of any act or omission of the Design/Builder, the Design/Builder's employees or agents.

In addition to any remedy authorized by law, moneys due the Design/Builder under the Design Build Agreement, as considered necessary by the STA, may be retained until disposition has been made of such suits, actions, or claims for damages; however, this provision shall not be construed as precluding the STA from enforcing any right of offset the STA may have to any such moneys. These obligations shall apply to any claim or action asserted by a private party or by a governmental agency, including, but not limited to, any claim or action for multiple or punitive damages; and these obligations are intended to apply with respect to claims arising during the term of this Agreement or following any expiration or other termination of this Agreement, and shall survive the expiration or other termination of this Agreement.

.2 The Design/Builder's obligations as described above shall apply only if the Design/Builder is at fault or negligent (partly or wholly) on its part or on the part of the indemnified parties to the extent allowed by law. Said obligations shall not apply to injury, death, or damage to property to the extent arising from the negligence or the willful misconduct of said indemnified party or its officers, agents, servants, or independent contractors (including the Master Architect) who are directly responsible to the indemnified party, or for defects of design furnished by such persons but provided further that the foregoing limitations shall not apply to the extent reimbursable through any insurance required by this Agreement.

.3 These obligations of the Design/Builder shall not be construed to negate, abridge, or otherwise reduce any right of indemnity or any other rights to which the STA would otherwise be entitled.

12.2.2 The Design/Builder shall cause all subcontracts to include the indemnification and hold harmless requirements set forth in this Article, in a form satisfactory to the STA.

12.3 No Personal Liability.

No officer, elective and appointive Board member, employee, or consultant of the STA will be personally responsible for liabilities arising under this Design Build Agreement.

12.4 Performance Bond and Payment Bonds.

12.4.1 The Design/Builder shall furnish to the STA, prior to the awarding of any contract, a surety bond in favor of the STA in the amount of not less than one hundred (100%) of the Contract Amount, to guarantee faithful performance of Contract and a payment bond, each in the form attached to the Design Build Agreement. Bond shall guarantee repair or replacement of deficient, defective or faulty materials and workmanship for a period of one year following completion of the project unless otherwise required in the Contract Documents. The Bond shall be issued by an California admitted surety with a rating classification of "A XIII" or better according to Best's Rating Service.

12.4.2 The STA acknowledges that any faithful performance and payments bonds provided by the Design/Builder shall not apply to errors or omissions in the furnishing of professional services in connection with architecture or engineering services provided by the Design/Builder or its consultants. The STA waives and releases all claims against such sureties arising out of or relating to such professional errors and omissions; such release, however, does not apply to a failure to provide professional services where required under the Contract, and the performance bonds shall include the costs of such services. Professional Liability insurance shall be primary insurance in settling claims related to Errors and Omissions.

ARTICLE 13 – SEPARATE CONTRACTS

13.1 STA's Right to Perform Construction and to Award Separate Contracts

13.1.1 The STA reserves the right to perform work or operations related to the Project with the STA's own work force, and to award separate contracts in connection with other portions of the Work or other construction or operations on the Work. Any separate construction contract awarded will contain the same or similar provisions as contained in this Agreement.

13.1.2 When separate contracts are awarded for different portions of the Work or for other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate agreement.

13.1.3 The STA will provide for coordination of the activities of the STA's own work force and of each separate Contractor with the work of the Design/Builder, who shall cooperate with them. The Design/Builder shall participate with other separate Contractors and the STA in reviewing and revising their Baseline Schedules when directed by the STA. The resulting Baseline Schedules shall then constitute the schedules to be used by the Design/Builder, separate Contractors and the STA.

13.1.4 The STA reserves the right to perform other work in connection with the Project or adjacent to the Project site by separate contract or otherwise. The Design/Builder shall at all times conduct the Work so as to impose no hardship on the STA or others engaged in the Work, nor to cause any unreasonable delay or hindrance to the Work.

13.2 Mutual Responsibility.

13.2.1 The Design/Builder shall afford the STA and other Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractors construction and operations with theirs as required by the Contract Documents.

13.2.2 If part of the Design/Builder's work relies on proper execution or results upon construction or operations by the STA or a separate Contractors, the Design/Builder shall, prior to proceeding with that portion of the work, report to the STA apparent discrepancies or defects in other construction that would render it unsuitable for proper execution and results. Failure of the Design/Builder to report any discrepancies or defects shall constitute an acknowledgment that the STA's or separate Contractors' complete or partially completed construction is fit and proper to receive the Design/Builder's work.

13.2.3 The Design/Builder shall promptly remedy damage wrongfully caused by the Design/Builder to any completed or partially completed construction or to any property of the STA or separate Contractors.

13.2.4 The STA and each separate Contractor shall have the same responsibilities for cutting and patching as are described in Paragraph 3.7, Cutting and Patching.

ARTICLE 14 – MISCELLANEOUS

14.1 Governing Law.

The parties have executed and delivered this contract in the STA, State of California. This Design Build Agreement shall be governed by the laws of the State of California. Solano STA shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this contract.

14.2 Successors.

The STA and the Design/Builder respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other party 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 Design Build 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 Design Build Agreement and the Contract Documents.

14.3 Notice.

Written notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, by facsimile, by registered or certified first class U.S. mail, return receipt requested with postage pre-paid, or by commercial courier. Written notice shall be deemed to have been duly served in the date of delivery if delivered in person or by facsimile, on the first working day after deposit if delivery by overnight courier, or two (2) working days after deposit of delivery by placing in the U.S. mail as provided herein. All notices shall be addressed to the appropriate Authorized Representative, as follows:

Design/Builder:

STA:

Daryl K. Halls, Executive Director
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585

14.4 Statutory Limitations.

Commencement of statutory limitation periods and statute of repose periods shall be as follows:

14.4.1 As to acts or failures to act occurring prior to 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 such date of Final Completion.

14.4.2 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 Design/Builder, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the STA, whichever occurs last.

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

14.5 Modifications.

No modifications or Change Orders shall be valid unless in writing and signed by the STA and the Design/Builder or their respective permitted successors and assigns. The Design/Builder and the STA agree to make modifications to this Design Build Agreement if requested by the STA's lender(s), provided that such modifications do not adversely affect the costs and/or risks and/or time of performance of the Work.

14.6 Meaning of Words.

Any and all headings used in this Design Build Agreement are for convenience only and do not modify, define or limit the provisions of it. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms of this Agreement. 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 Design Build Agreement. Where reference is made in this Design Build Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

14.7 Severability.

If any provision of this Design Build 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 any other provision contained herein to be inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this

Design Build Agreement shall not affect the remaining portions of this Design Build Agreement or any part of it, and they shall otherwise remain in full force and effect.

14.8 Whole Agreement.

This Design Build Agreement and all exhibits, the Design/Builder's Proposal which is incorporated by reference, 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 Design Build Agreement that are not expressly addressed in this Agreement. By incorporating the Design/Builder's Proposal as part of this Design Build Agreement, the STA does not accept any provision of the Proposal that are not in conformance with the criteria of the Request for Proposal.

14.9 Record Retention and Audits.

Design/Builder agrees that the awarding department (the Department of General Services), or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Design/Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design Build Agreement; the accounting and control systems shall be reasonably satisfactory to the STA and shall be in accordance with generally accepted accounting standards.

Design/Builder shall retain all records, books, correspondence, instructions, drawings, receipts, subcontracts, vouchers, memoranda and other data relating to this Design Build Agreement for a period of five (5) years after Final Payment under this Agreement, or for such longer period as may be required by law. Design/Builder agrees to allow the STA auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records, and not withhold relevant information. Further, Design/Builder agrees to include a similar right of the STA to audit records and interview staff in any subcontract related to performance of this Agreement.

14.10 Deliverables.

The Design/Builder is responsible for delivery to the STA certain drawings, schedules, reports, samples and other documents as described in the Contract Documents.

14.11 Waiver.

No waiver of any condition, requirement or right expressed in this Agreement shall result from any forbearance of the STA to declare a default.

14.12 Brokerage or Contingent Fees.

Design/Builder warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon understanding or agreement for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or established commercial or selling agencies

maintained by Design/Builder for securing business. For breach or violation of this warranty, the STA shall, in addition to other remedies provided by law, have the right to terminate this Agreement without liability, paying only for the work performed, or otherwise recover the full amount of such commission, brokerage or contingent fee.

14.13 Computer Software.

Design/Builder certifies that it has appropriate systems and controls in place to ensure that STA funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

14.14 Independent Capacity.

Design/Builder, and agents and employees of Design/Builder, in the performance of the agreement, shall act in an independent capacity and not as officers or employees or agents of the STA.

14.15 Air or Water Pollution Violations.

By signing this agreement, the Design/Builder swears, under penalty of perjury, that the Design/Builder is not: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

ARTICLE 15 – EXECUTION OF THE AGREEMENT

15.1 This Contract may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. A facsimile or other electronically transmitted version shall be deemed to be an original copy.

15.2 The parties have executed this Agreement the day and year first written above.

SOLANO TRANSPORTATION AUTHORITY

DESIGN/BUILDER

By: _____
Daryl K. Halls, Executive Director

By: _____

APPROVED AS TO FORM

By _____
Bernadette Curry, STA Legal Counsel

EXHIBIT A – PROJECT MILESTONE SCHEDULE

The Project Milestone Schedule below identifies the major events for the Project. The Design/Builder confirms that the Contract Time and Milestones allow a reasonable period of time for completing the work under the Project.

- Commence Site Demolition and Construction....._____
- 100% Construction Drawings_____
- Beneficial Occupancy....._____
- Owner FF&E Installation and Move-In....._____
- Final Acceptance....._____

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EXHIBIT B – CONTRACT DOCUMENTS

The Contract Documents consist of the following, all of which, together with this Design Build Agreement, form the entire agreement between the STA and the Design/Builder.

1. Pre-Qualification Questionnaire for Prospective Design-Build Entities
2. Design Builder Pre-Qualification Submittal
3. Request for Proposals
4. Technical Proposals
5. Agreement
6. Design Requirements
7. Space Programming
8. Drawings
9. Specifications
10. LEED Design Requirements
11. Appendices
12. Proposal Addenda
13. Design Builder Proposal
14. Once approved by Solano STA, Design/Builder's Permitted Documents

EXHIBIT C – ONSITE FIELD OFFICE SPACE, FURNITURE & EQUIPMENT REQUIREMENTS

1.

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EXHIBIT D – SAMPLE FORM OF PAYMENT & PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS, that _____
Design/Builder _____ (hereinafter
called the “Principal”) as Principal and _____,
_____ a corporation organized and existing under the laws of the State of
_____ (hereinafter called the “Surety”), as Surety, are held and firmly
bound to SOLANO TRANSPORTATION AUTHORITY (hereinafter called the “STA”), as
Obligee, in the sum of _____ Million Dollars (\$_____), for the payment of
which sum well and truly be made, the said Principal and Surety bind themselves, and their
respective heirs, subcontractors, contractors, successors and assigns, jointly and severally,
thereby by these presents.

WHEREAS, (I) the Design/Builder has entered into a Design Build Agreement (hereinafter
called the “D-B Agreement”) with the STA for the design and construction of the new STA
building (hereinafter called the “Project”); and

WHEREAS, the Principal has submitted a bid for the work on the Project.

NOW THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal
shall well and truly perform all of the undertakings, covenants, terms, conditions and
agreements of the Contract Documents within the time provided therein and any extensions
thereof that may be granted by the Authority, as applicable, and during the life of any guaranty
or warranty required under the Contract Documents and shall also well and truly perform all of
the undertakings, covenants, terms conditions and agreements of any and all duly authorized
modifications of the Contract Documents that may be made, and shall indemnify and save
harmless the obligee of and from any and all loss, damage, and expense, including costs and
attorney’s fees, from which the said obligee may sustain by reason of failure to do so, then this
obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alterations, additions, omissions or
other modifications of the terms of the Contract Documents or in the work to be performed with
respect to the Project, or in the specifications of plans, or by any change or modification of any
terms or payment or extension of any time for any payment pertaining or relating to the Contract
Documents, or by rescission or attempted rescission of the Contract Documents, or this Bond,
or by any condition precedent or subsequent in this Bond attempting to limit the right of recovery
of obligee otherwise entitled to recover under this Bond, or by any fraud practiced by any person
other than the obligee seeking to recover on this Bond, shall in anywise affect its obligation on
this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations,
additions, omissions or other modifications. The Surety agrees that to the extent that payment of
sums pursuant to the Contract Documents undertaken by the Surety, and the payment
obligation could be construed as an obligation under this Bond or the payment bond issued by
the Surety contemporaneously with the issuance of the Bond, such payment shall be treated
solely as the discharge of an obligation under the payment bond and shall not reduce or impact
on the Surety’s obligations under this Bond.

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

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this ____ day of _____, 20__, the names and corporate seals of the corporate parties being affixed and those presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

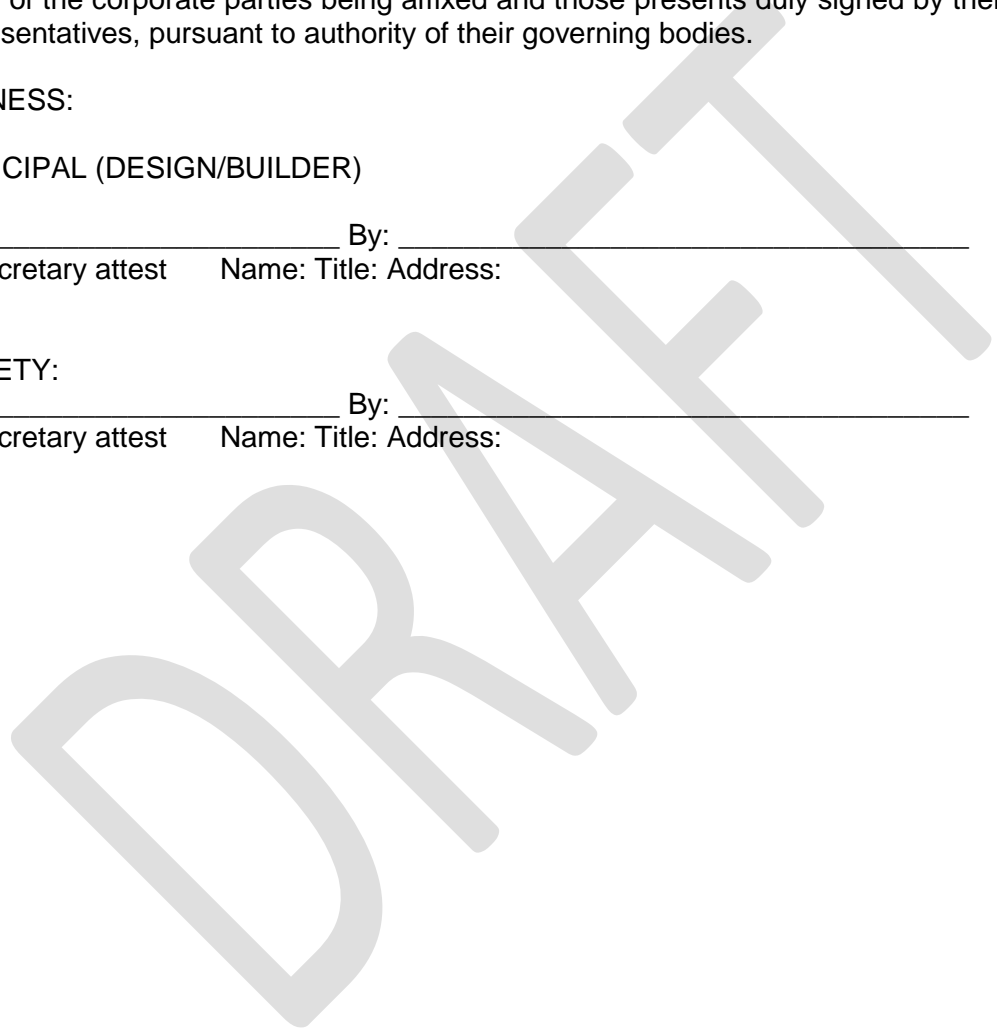
WITNESS:

PRINCIPAL (DESIGN/BUILDER)

_____ By: _____
or secretary attest Name: Title: Address:

SURETY:

_____ By: _____
or secretary attest Name: Title: Address:



PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the SOLANO TRANSPORTATION AUTHORITY (herein after called the "STA") has awarded a Design Build Agreement (hereinafter called the "D-B Agreement") to _____, the Design/Builder (hereinafter called the "Design/Builder") for the design and construction of the new STA Building Project (hereinafter called the "Project"); and

WHEREAS, the Design/Builder is required to furnish a payment bond in connection the Contract Documents, to secure the payment of claims of Design/Builder laborers, mechanics, material persons and other persons as provided by law.

NOW THEREFORE, we the undersigned Principal (Design/Builder) and Surety are held and firmly bound unto the Authority obligee in the sum of _____ Million Dollars (\$_____) for which payment well and truly to be made we bind ourselves our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, or its heirs, executors, administrators, successors or assigns or subcontractors, shall fail to pay any of the persons named in California Civil Code section 9100 et seq., or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld and paid over the California Franchise Tax Board from the wages of employees of the Principal and/or its subcontractors pursuant to Section 18306 of the California Revenue and Taxation Code, with respect to such work and labor, then the surety or sureties will pay such amounts in an amount not to exceed the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the surety will pay a reasonable attorney's fees to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9101 et seq. as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Notwithstanding the number of claimants on this bond or any underlying law to the contrary, the Sureties shall not be liable under this bond for an amount greater than the aggregate penal sum designated above.

The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to the Contract Documents, or by any recession or attempted recession of the Contract Documents, or this Bond, or by any conditions precedent or subsequent in this Bond attempting to limit the right of recover of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any person other than the claimant seeking to recover on this Bond, shall in any way affect its obligations on this Bond, and it does waive notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

When this Bond had been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall deemed incorporated in it. The intent is that this Bond shall be construed as a statutory bond and not a common law bond.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this ____ day of _____, 20 _____, the names and corporate seals of the corporate parties being affixed and those presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

WITNESS:

PRINCIPAL (DESIGN/BUILDER)

_____ By: _____
or secretary attest Name: Title: Address:

SURETY:

_____ By: _____
or secretary attest Name: Title: Address: