

DBIA



DESIGN-BUILD
INSTITUTE OF AMERICA

Standard Form of General Conditions of Contract Between Owner and Design-Builder

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

Table of Contents

Article 1:	General.....	1
Article 2:	Design-Builder's Services and Responsibilities	1
Article 3:	Owner's Services and Responsibilities.....	6
Article 4:	Hazardous Conditions and Differing Site Conditions.....	8
Article 5:	Insurance and Bonds.....	9
Article 6:	Payment	10
Article 7:	Indemnification	14
Article 8:	Time	14
Article 9:	Changes to the Contract Price and Time	15
Article 10:	Contract Adjustments and Disputes	17
Article 11:	Stop Work and Termination for Cause	19
Article 12:	Miscellaneous	20

Article 1

General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition), as amended. For this Project, the words "Agreement" and "Contract" are interchangeable and equal in meaning.

1.2.2 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 *Design Consultant* is a qualified, appropriately licensed, design professional who is an employee of Design-Builder, is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services in the applicable discipline required under the Contract Documents. "Design Consultant" includes any architect/engineer of record who is a qualified and licensed design professional, is a member of Design-Builder's organization or team, and provides the primary design services under the Agreement.

1.2.4 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements. "Hazardous Conditions" include (i) "Regulated Asbestos Containing Materials" as defined in the National Emissions Standards for Hazardous Air Pollutants (NESHAP), and (ii) harmful levels of lead paint and hazardous types and quantities of mold, mildew, fungi or microbes that reasonably require a halt to construction.

1.2.5 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition), as amended.

1.2.6 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 *Owner's Requirements* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Requirements may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 *Site* is the land or premises on which the Project is located.

1.2.9 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.10 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.11 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's

Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a status report every month during the design and construction phases of the Project detailing the progress of the Work in a form, detail and character approved by Owner, including a listing and the status of all construction change directives, change proposals, Change Orders, modifications and other relevant documents, and whether (i) the Work is proceeding according to schedule, and if not, the reasons therefor as well as the status of design and construction activities, including an estimated percentage of completion, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule (the "Schedule"), prepared in accordance with the applicable provisions of the Contract Documents, for the execution of the Work for Owner's review and response. The Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

- .1 When the Schedule or any reports indicate that a delay may be expected, Design-Builder shall take whatever measures are necessary (including, but not limited to, scheduling sufficient overtime) to improve the progress of the Work and shall submit a revised Schedule within seven (7) days after

learning of a probable delay. The revised Schedule shall be in form and substance acceptable to Owner and shall indicate how the rate of progress will be regained without increase to the Contract Price. No adjustment or extension of the Schedule or the Contract Time(s) in which the Contract Documents are to be performed will be made or granted without Owner's written consent.

- .2 Notwithstanding anything to the contrary in Section 2.1.3.1 above, Design-Builder shall be entitled to compensation and time extensions in accordance with Section 8.2 below.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 Design-Builder shall be responsible to Owner for actions, inactions, errors, and omissions of Design-Builder's employees, Subcontractors and their agents and employees, and other persons, including any Design Consultant(s) (firms or individuals) performing any portion of Design-Builder's obligations.

2.1.6 Construction Documents shall be signed and sealed by a Design Consultant.

2.1.7 Design-Builder shall review Owner-provided information and documents upon receipt and, if such documents are incomplete, Design-Builder shall request in writing any additional information required for such review.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or shall be deemed to create

any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 A Design Consultant cannot be changed without supporting documentation and Owner's approval, which approval may not be unreasonably withheld, in accordance with Owner's Requirements.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing in the Commonwealth of Virginia under similar conditions at the same time of the Project. Notwithstanding the preceding sentence, if the Agreement sets specific performance standards for any design aspect of the Work, the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in the Schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review

and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above and with any applicable provision of the Contract Documents. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit five (5) sets of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

- .1** Within the Construction Documents, if the drawings and specifications provided by Design-Builder and made a part of the Contract Documents under Article 2 of the Agreement conflict with each other or with themselves, the better quality and greater quantity of Work provided for shall govern in accordance with Owner's interpretation.
- .2** Within the Construction Documents, if any item or material shown on the drawings which is necessary for the Work is omitted from the specifications, or vice versa (except when the drawings and specifications clearly exclude such omitted item), Design-Builder shall furnish and install such item or material which conforms to the type and quality of similar items and materials otherwise established on the drawings or in the specifications.
- 3.** Within the Construction Documents, where a typical or representative detail is shown on the drawings, such detail shall constitute the standard for workmanship and materials throughout corresponding parts of the Work and Design-Builder shall adapt such detail for use in said corresponding parts of the Work as long as it is in keeping with the design intent.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder

may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.5.3 Design-Builder shall review Legal Requirements applicable to design and construction of the Project, correlate such Legal Requirements with the Contract Documents, and advise Owner in writing within five (5) business days if any Owner's Requirement may cause a violation of such Legal Requirements. At any time, if Design-Builder believes or is advised by any Design Consultant(s) retained to provide services on this project that implementation of any instruction received from Owner would cause a violation of any applicable Legal Requirement, Design-Builder shall notify Owner in writing. Proceeding with construction of any aspect of the Work shall constitute an acknowledgment by Design-Builder to Owner that that aspect of the Work is in compliance with all Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List (if any) attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents and, at a minimum, in conformance with industry standards.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

- .1** If a portion of Design-Builder's Work depends upon proper execution and completion of construction or

operations by Owner's separate contractor, Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction discovered by Design-Builder that would render it unsuitable for such proper execution and results. Failure of Design-Builder to report such discovered discrepancies or defects shall constitute an acknowledgment that Owner's separate contractor's, completed or partially completed, construction is fit and proper to receive Design-Builder's Work, except as to defects not then reasonably discoverable.

- .2 Owner shall be reimbursed by Design-Builder for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities (provided the work or activities have been coordinated and planned with Design-Builder) or defective Work of Design-Builder. Design-Builder shall promptly remedy damage wrongfully caused by Design-Builder to completed or partially completed construction or to property of Owner or separate contractors of Owner.

2.7.6 Consistent with any applicable provision of the Contract Documents, Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.7 Design-Builder's Project Manager shall represent Design-Builder, and communications given to the Project Manager shall be as binding as if given to Design-Builder.

2.7.8 Design-Builder shall employ a competent superintendent who shall be on-site full-time during performance of the construction Work.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, promptly commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one (1) year period referenced in Section 2.10.1 above applies only to Design-

Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents. This period of one (1) year shall be extended with respect to major components or portions of the Work first performed after Substantial Completion to one (1) year after Substantial Completion of such extended Work. This period shall also be extended for that portion of the Work in which guarantees or warranties are required by the specifications for a longer period than one (1) year. Owner shall also have the full benefit of longer warranties provided by Subcontractors, if any. Such warranties shall survive acceptance of the Work under the Contract Documents and termination of this Agreement.

2.10.4 Design-Builder's duty to correct deficiencies during the first year after completion of the Work shall include the duty to repair cosmetic checking or cracking of walls, floors or ceilings and the chipping or flaking of paint not caused by post-occupancy events outside the control of Design-Builder. Further, such cosmetic defects shall not constitute notice or give rise to a duty on the part of Owner to investigate for structural, foundational or other substantial defects that may have caused or led to the cause of the cosmetic deficiencies during such period.

2.11 Notification of Ownership Changes

2.11.1 Design-Builder shall notify Owner within thirty (30) days after it becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records.

2.11.2 Design-Builder shall also notify Owner within thirty (30) days after changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services so as not to materially delay or interfere with Design-

Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Schedule.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- .1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2 A general geotechnical study of the Site conducted on behalf of and prepared for Owner. Design-Builder understands and agrees that this geotechnical study was prepared without Owner's knowledge of the final footprint of the building on the Site and therefore may not have adequately addressed the soils where Design-Builder sited the building in its Proposal to Owner. Design-Builder shall determine for itself whether the Owner-provided study is adequate for its final design and shall obtain at its own expense any additional studies its Design Consultant(s) deem necessary. Should subsequent studies reveal conditions not apparent in the Owner-provided study and not discoverable by means other than a subsurface investigation, the Contract Time(s) and cost shall be adjusted in accordance with Section 4.4 below;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

.4 A legal description of the Site;

.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.2.3 Notwithstanding anything to the contrary in this Section 3.2, Owner shall be required to furnish information or services described only to the extent that such information or service is reasonably required or useful to Design-Builder in performing Work under this Agreement.

3.3 Financial Information

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.3 Owner's Representative

3.3.1 Owner's Representative shall be responsible for providing Owner-supplied

information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.4 Government Approvals and Permits

3.4.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List, if any, attached as an exhibit to the Agreement.

3.4.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.5 Owner's Separate Contractors

3.5.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i)

ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Hazardous Conditions Statement

4.2.1 In accordance with Legal Requirements, Design-Builder is hereby notified that to the best

knowledge of Owner or those representing Owner in any capacity, other than as identified in the Environmental Phase 1 report, this Project does not involve Hazardous Conditions.

4.2.2 Design-Builder is instructed that no Hazardous Conditions are to be introduced to the Site or installed in the Project.

4.3 Hazardous Condition Liability Statement

4.3.1 In accordance with Legal Requirements, neither Owner, employees or agents of Owner, nor any other person may have any claim, right or action against Design-Builder for any Hazardous Conditions-related injury or damage arising from the activities of a certified Hazardous Conditions abatement Subcontractor. Unless exempt under applicable state and federal law, no Hazardous Conditions abatement work may be performed except by a certified Hazardous Conditions abatement contractor. A certified Hazardous Conditions abatement Subcontractor shall hold Owner and Design-Builder harmless from any liability arising from such Subcontractor's activities on the Project. A certified Hazardous Conditions abatement Subcontractor shall cause Owner and, if acting as a Subcontractor, Design-Builder to be named as additional insureds and provide sufficient proof of insurance for purposes of this section.

4.4 Differing Site Conditions

4.4.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents and/or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions". If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.4.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible,

provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder shall not commence work under this Agreement until it has obtained all the insurance required under this Section and such insurance has been approved by Owner. Design-Builder shall maintain and shall ensure that each Subcontractor maintains for the life of the Agreement:

- .1** Worker's Compensation Insurance as required by Virginia Law and Employers Liability Insurance with a limit of not less than \$1,000,000.00 for each accident;
- .2** Commercial General Liability Insurance or equivalent form with a limit of not less than \$2,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall include city officers, employees and agents as additional insureds, with no special limitations on the scope of protection afforded to city officers, employees and agents, shall be on an occurrence basis and shall be primary with respect to any insurance or self-insurance programs covering city officers, employees and agents;
- .3** Business Automobile Liability Insurance or equivalent form with a limit of not less than \$2,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles;
- .4** All-Risk Builder's Risk Insurance and Professional Liability Insurance in the full amount of the Contract Price set

forth in Article 6 of the Agreement, upon any building, structure, equipment and appliance in the process of construction or installation under city contract and upon all materials on-Site or in transit to the Site and intended for use therein until such time as the building, structure, equipment and appliances have been finally accepted by Owner and the Agreement completed; and

5.1.2 Design-Builder's Commercial General Liability Insurance, All-Risk Builder's Risk and Professional Liability Insurance set forth above shall specifically delete any design-build or similar exclusions that could compromise coverage because of the design-build delivery of the Project.

5.1.3 Design-Builder shall ensure that each Design Consultant maintains Professional Liability Insurance with a limit of not less than \$1,000,000.00 per claim and in the aggregate with a deductible not to exceed \$25,000.00. Professional Liability Insurance coverage shall be for a minimum of three (3) years after the date of the final payment to Design-Builder.

5.1.4 Prior to commencing any design or construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, or renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. Notwithstanding the above, such certification of All-Risk Builder's Risk Insurance may be provided after commencement of design services but shall in any event be provided prior to the start of construction services. Owner shall be named as a certificate holder and additional insured on all insurance policies, with respect to work performed by or on behalf of Design-Builder, and a copy of the endorsement naming Owner as an additional insured shall be attached to each certificate of insurance. Owner reserves the right to request certified copies of any required insurance policies.

- .1 Owner's approval or acceptance of any certificate of insurance shall in no way release or relieve Design-Builder from any of its responsibilities, liabilities or obligations.

- .2 All insurance policies and certificates of insurance shall be issued only by companies authorized to do business in the Commonwealth of Virginia and reasonably acceptable to Owner. It shall be Design-Builder's responsibility to keep the respective insurance policies and coverages current and in force for the life of the Agreement.
- .3 As an alternative, Project Insurance of equal coverage will be acceptable.

5.2 Bonds and Other Performance Security

5.2.1 Before commencing any Work hereunder, Design-Builder shall provide Owner with (a) a performance guaranty executed by Howard Shockey & Sons, Incorporated with respect to all of Design-Builder's construction obligations under the Contract Documents, and (b) a performance guaranty executed by OWPR, Inc. with respect to all of Design-Builder's design obligations under the Contract Documents. Each such guaranty shall be in a form reasonably acceptable to Owner and Design-Builder.

5.2.2 In addition to the guaranty requirements in Section 5.2.1 above, before commencing any Work hereunder, Design-Builder shall provide Owner with a Performance and Payment Bond issued by a surety reasonably acceptable to Owner in an amount not less than the Contract Price set forth in Article 6 of the Agreement. The Performance and Payment Bond shall be in a form reasonably acceptable to Owner.

Article 6

Payment

6.1 Schedule of Values

6.1.1 Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values (the "Schedule of Values") for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The notarized Application for Payment shall be accompanied by all supporting documentation required below, or elsewhere by the Contract Documents, and/or established at the meeting required by Section 2.1.4 hereof (the form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet):

- .1 For each Subcontractor and supplier requesting payment for the first time, an executed subcontract;
- .2 Conditional lien waivers on a form acceptable to Owner establishing the total amount of payments to date and the amount of the current request for all Subcontractors and suppliers;
- .3 Updated Schedule, Schedule of Values and draw schedule.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance, and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all

amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.3.3 Design-Builder shall pay to each Subcontractor, out of the amount paid to Design-Builder on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled within five (5) days of receiving payment from Owner. Design-Builder shall not withhold any such sums from Subcontractors without giving prior written notice of intention to do so to and receiving approval to do so from Owner. If for any reason Design-Builder has not paid a Subcontractor within such five (5) day period, Design-Builder shall, within forty-eighty (48) hours thereafter, return the amount due such Subcontractor to Owner, and provide Owner with a written statement explaining the reasons for not making such payment.

6.4 Right to Stop Work and Interest

6.4.1 If Owner fails to pay Design-Builder any reasonably undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and

Subcontractors to pay those parties with whom they have contracted. Should any of Design-Builder's contracts with its Design Consultants or Subcontractors provide for the withholding of retainage at a rate greater than the rate to which Design-Builder is subject, Design-Builder shall notify Owner and shall not submit an application to Owner requesting payment for any such retainage withheld by Design-Builder or its Design Consultants, Subcontractors, or Sub-Subcontractors until such time as the retainage is released. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it reasonably believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days following Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to twice (200% of) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.7 Partial Occupancy or Use

6.7.1 Owner 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 Design-Builder, provided such

occupancy or use is consented to by the applicable insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage (if any), 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. Consent of Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between Owner and Design-Builder or, if no agreement is reached, by decision of Owner.

6.7.2 Immediately prior to such partial occupancy or use, Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

6.7.3 Upon making final payment, Owner shall waive all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

6.8 Final Payment

6.8.1 After receipt of the final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.8.2 At the time of submission of its final Application for Payment, Design-Builder shall provide to Owner the following information and/or documents:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied and that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3 consent of Design-Builder's surety, if any, to final payment;
- .4 all operating manuals, warranties and other deliverables required by the Contract Documents. All guarantees and warranties required by the Contract Documents shall include assignment from Design-Builder and Subcontractors to Owner, as well as a list of the names, addresses and telephone numbers of all Subcontractors and any other entities providing these guarantees or warranties;
- .5 certificates of insurance confirming that required coverages will remain in effect after final payment and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner, consistent with the requirements of the Contract Documents;
- .6 a final completion certificate confirming that all of the Work to be performed,

including, without limitation, punchlist items, is complete and all other conditions of the Contract Documents relating to final payment for, or approval of, the Work have been satisfied;

- .7 a certificate of occupancy and all other certificates and approvals which are to be provided by Design-Builder hereunder and required for Owner to lawfully occupy and operate the Project, and all authorizations required from any authority having jurisdiction over the Project and the operation thereof, to the extent that these approvals and authorizations are related to the design and construction of the facility; and
- .8 all as-built record documents.

6.9 Liens

6.9.1 As long as payment is made in accordance with the terms of the Contract Documents, Design-Builder shall not voluntarily permit any laborer's, materialmen's, mechanic's or other similar lien or stop notices to be filed or otherwise imposed on any part of the Work or the property on which the Work is performed. If any laborer's, materialmen's, mechanic's or other similar lien or stop notice, or claim thereof, is filed and Design-Builder does not cause such lien or stop notice to be released and discharged forthwith, or does not file a bond in lieu thereof, Owner, upon seven (7) days' written notice to Design-Builder, but without limiting its other remedies, shall have the right to pay all sums necessary to obtain such release and discharge or deduct same from monies due Design-Builder in each succeeding Application for Payment until the total amount of the same has been recouped, as Owner may elect. If any such lien or stop notice is filed or otherwise imposed, then, at the request of Owner, Design-Builder shall cause such lien or stop notice to be released and otherwise discharged. Design-Builder shall indemnify and hold harmless Owner from and against all claims, losses, demands, causes of action or suits, including attorney's fees and all costs in conjunction with defending against the same, of whatever nature arising out of any such lien or stop notice.

Article 7

Indemnification

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall, to the extent permitted by applicable law, defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the

parties relating to liability for infringement or violation of any patent or copyright.

7.2 Hold Harmless Indemnification

7.2.1 Design-Builder shall indemnify and hold Owner and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or in equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Owner, its agents, employees, and officers arising out of, in connection with, or incident to the execution of this Agreement and/or any negligent act or omission of Design-Builder, its agents, employees, and/or officers related to any aspect of this Agreement or performance hereunder. The provisions of this Section shall survive the expiration or termination of this Agreement.

7.2.2 To the fullest extent permitted by applicable law, Owner shall indemnify and hold Design-Builder and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or in equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Design-Builder, its agents, employees, and officers arising out of, in connection with, or incident to Owner's execution of this Agreement and/or any negligent act or omission of Owner, its agents, employees, and/or officers related to any aspect of this Agreement or performance hereunder. The provisions of this Section shall survive the expiration or termination of this Agreement.

7.2.3 In consideration for the use of any documents provided in electronic form by Owner, Design-Builder, Subcontractor, Sub-subcontractor and others agree to indemnify, defend and hold harmless Owner from and against all claims, liabilities, losses, damages, and costs claim or liabilities arising out of such use.

Article 8

Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

8.3 Contract Time Adjustments

8.3.1 If Design-Builder wishes to make a claim for an increase in the Contract Time(s), written notice as provided herein shall be given within five (5) business days following the event giving rise to such claim. Design-Builder's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one (1) claim shall be necessary.

8.3.2 If adverse weather conditions are the basis for a claim for an increase in the Contract Time(s), such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the Schedule for the Work.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

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

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner, with a detailed analysis subdivided into the Work of Design-Builder and the Work of each subcontractor involved in the change, with each such subdivision further be broken down, upon request, into the following elements:
 - .1 Number of man-hours of labor to be performed by each trade, craft or classification of employee involved in the proposed change;
 - .2 The hourly rate for each such trade, craft or classification of employee;
 - .3 The estimated quantity of each item or element of material and/or equipment entering into the proposed change;
 - .4 The unit cost of each such item or element of material and/or equipment;
 - .5 Rental of items or units of construction plant and equipment with a schedule of the period or

periods of use of such item or unit in connection with the proposed change;

- .6 Rental terms and rates for each such item or unit of construction plant and equipment. Rental for equipment shall be based on the following:
 - .1 Hourly rental rates shall be based on 80% of the applicable rates for equipment listed in the 'Green Book', latest edition (published by Associated Equipment Distributors, 615 West 22nd Street, Oakbrook, Illinois 60523);
 - .2 Hourly rental rates for equipment not listed in the 'Green Book' shall be based on 100% of the applicable rates for equipment listed in the 'Blue Book', latest edition (published by Dataquest, 1290 Ridder Park Drive, San Jose, California 95131);
 - .3 Hourly rental rates determined from the 'Green Book' or 'Blue Book' include all items of cost and expense to Design-Builder, including gas, oil, maintenance, repairs, insurance, and transportation to and from construction site;
 - .4 Power and/or other utilities entering into the proposed change;
 - .5 Rates and terms applicable to such power and/or other utilities;
 - .6 Additional premiums, if applicable, for the extension of insurance and surety bond coverages as required herein to the proposed change; and
 - .7 Applicable federal, state and local taxes.

- .3 Costs, fees and any other markups set forth in the Agreement; and
- .4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price of less than Twenty Five Thousand Dollars (\$25,000.00), there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder

to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or the Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

10.3 Arbitration

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above shall, if agreed to by the City Manager for the City of Manassas Park, be decided by arbitration in accordance with the

Construction Industry Arbitration Rules of the AAA then in effect, or in the event the City Manager fails to agree to arbitration, shall be decided in the Prince William County Circuit Court in accordance with Legal Requirements.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable Virginia law by any court having jurisdiction thereof.

10.3.3 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ten (10) days of Design-Builder's receipt of such notice. If Design-Builder has not commenced to cure the problem within such ten (10) day period, then Owner may declare the Agreement to be terminated for default by providing written notice to Design-Builder of such declaration. If Design-Builder has commenced and diligently and in good faith pursued, but has been unable to completely cure, the problem within such ten (10) day period, then Owner may provide one (1) additional ten (10) day period in which to cure the problem by giving written notice to Design-Builder of its intent to terminate the Agreement following the

additional cure period. If the problem has not been cured within the additional ten (10) day period and Design-Builder has not diligently and in good faith pursued such cure, then Owner may declare the Agreement to be terminated for default by providing written notice to Design-Builder of such declaration. If, however, the problem has not been cured within the additional ten (10) day period through no fault of Design-Builder, then Owner and Design-Builder shall promptly meet to determine a mutually-agreeable period of time to allow Design-Builder to cure the problem, which additional period will then be set forth in writing. The cure provisions of this section shall not be deemed to affect any other rights of Owner set forth in the Contract Documents, including, but not limited to the liquidated damages provisions set forth in Article 5 of the Agreement.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If a court of competent jurisdiction determines that Owner has improperly terminated the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reason:

- .1 Owner's failure to pay undisputed amounts properly due under Design-Builder's Application for Payment, if such payment is more than sixty (60) days past due.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work unless said event is cured within fourteen (14) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such fourteen (14) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Bankruptcy of Owner or Design-Builder

11.4.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of

the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.4.2 The rights and remedies under Section 11.4.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Miscellaneous

12.1 Assignment

12.1.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, delegate, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their officers, employees, agents, heirs, successors and assigns.

12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the Commonwealth of Virginia.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined by a court of competent jurisdiction to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair

or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in these General Conditions of Contract, or any other of the Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.9 Adjacent Structures and Property

12.9.1 Design-Builder acknowledges that within the vicinity of the Site there are educational, residential and commercial structures and agrees, to the extent reasonably practicable, that Design-Builder will minimize the interference with and disruption of the ongoing use and enjoyment of these adjacent structures.

12.9.2 Design-Builder shall not encroach upon property adjacent to the Site or areas outside the limits of construction for storage of materials, nor shall any of Design-Builder's employees be permitted on such property or areas without permission of the property owners. Design-Builder shall repair, at its sole expense, any and all damage or injury to adjacent property or areas caused by its Work and shall leave such property or area in as good condition as before Work was started. Design-Builder shall indemnify and hold harmless Owner from any liability or responsibility for any claims due to such damage or injury caused by Design-Builder or its Design Consultants or Subcontractors and shall defend any action brought by reason thereof at its sole cost.

12.10 Special Condition for Parks and Recreation Building.

12.10.1 Design-Builder acknowledges that Owner is occupying and using existing structures on the Site for business and on-going operations and agrees, to the extent reasonably required by Owner, that Design-Builder will minimize the interference with and disruption of the ongoing use and enjoyment of these existing structures. If Design-Builder must disrupt Owner's operations or utility services to the existing structures, Design-Builder must first receive written approval from Owner with no less than seven (7) days' prior notice and written re-affirmation of such notice no less than two (2) business days prior to the planned disruption.