

2004 Exhibit A

Terms and Conditions

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This AIA A141 2004 Exhibit A is revised to include 2006 Arizona Modifications and is approved by the Office of the Arizona Attorney General.

for the following PROJECT:
(Name and location or address)

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THE OWNER:
(Name and location)

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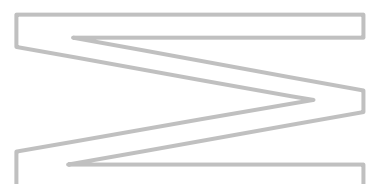
THE DESIGN-BUILDER:
(Name and location)

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ADDITIONS AND DELETIONS:
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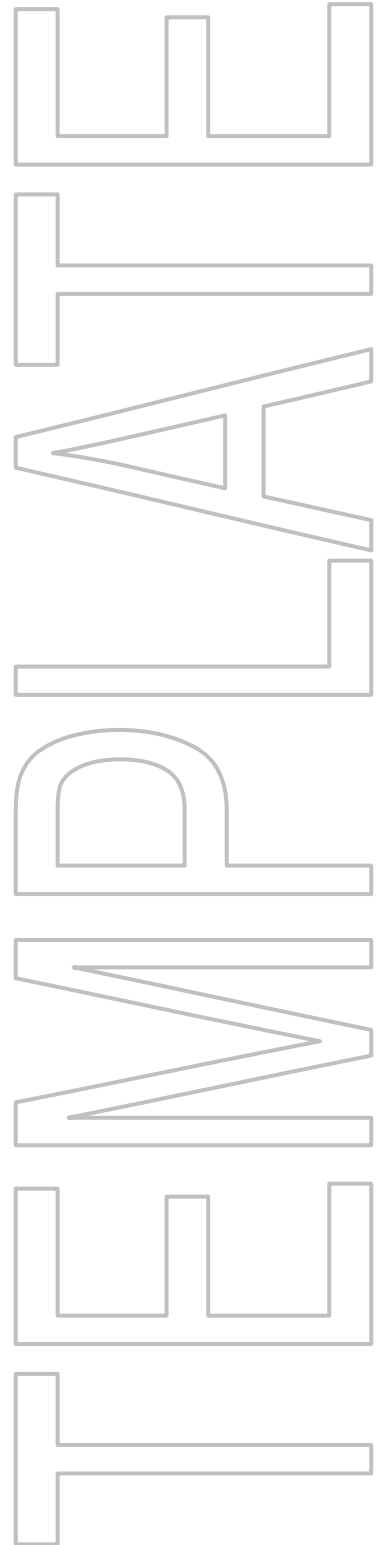
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## ARTICLE A.1 GENERAL PROVISIONS

### § A.1.1 BASIC DEFINITIONS

#### § A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

#### § A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### § A.1.1.3 ARCHITECT

*The Architect is responsible to the Design/Builder for any services designed, approved, certified, or accepted by its Engineers, Architects, Consultants, agents and employees. The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative registered in the State of Arizona. In designing the Project and preparing the Construction Documents, the Architect shall design the Work in compliance with applicable laws, Executive Orders, codes and generally accepted engineering and design standards. The Architect's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder. Local codes shall be applicable and local inspection requirements shall be satisfied as required by A.R.S. §34-461. If no local or State codes apply, the editions of Building, Plumbing, Mechanical and Electrical Code in effect on the date this Agreement is signed by the Design/Builder shall apply. Also applicable are: AAC R10-3-401 through 412 relating to their implementation, the American National Standards Institute's Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped, The State of Arizona Fire Code; A.R.S. §34-451, the latest edition of ASHRAE 90.1, adopted by the Department of Commerce, A.R.S. §34-452, solar energy and life cycle cost analysis and Executive Order 91-3, relating to Water Conservation for State Facilities. A.R.S. §34.452, for the energy conservation and equipment selection shall be incorporated in the Design of the Project.*

*The Life Cycle Cost Analysis requirements of A.R.S. §34.452, for the energy conservation and equipment selection shall be incorporated in the Design of the Project.*

*A.R.S. §41-793.02. Renovation or replacement of state buildings; building life extension study; definition*

***Executive Order 2005-05 – Implementing Renewable Energy and Energy Efficiency in New State Buildings.***

***Renewable Energy:** All new state funded-buildings constructed after the date of this Executive Order shall be designed and constructed to derive at least 10 percent (10%) of their energy from a renewal resource. A renewable resource may include: solar, wind, or the use of thermal energy from biomass fuels for heating and or cooling. This goal may also be met through the purchase of renewable energy credits (as defined by the Department of Commerce Energy Office) from an energy producer.*

***Energy Efficiency:** The design for all state-funded buildings constructed after the date of this Executive Order shall include energy efficiency standards consistent with Arizona Revised Statutes § 34-451 and Executive Order 2003-14.*

***LEED Standard:** All state-funded buildings constructed after the date of this Executive Order shall meet at least the "Silver" Leadership in Energy and Environmental Design (LEED) standard.*

#### § A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### § A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### § A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

#### § A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

#### § A.1.1.8 NEUTRAL

~~The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1. The Parties agree that the Arizona Procurement Code and rules issued there under shall be the exclusive means for resolving disputes arising under the Contract.~~

*Any dispute between the Design-Builder and the Owner or the Owner's authorized representative arising out of or relating to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in the General Conditions, shall be resolved pursuant to the Arizona Procurement Code (Chapter 23, Title 41, A.R.S.) and the Rules of the Director of the Department of Administration.*

*No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court for Maricopa County, and then only after exhaustion of all administrative remedies.*

#### § A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation. The Design-Builder, Architect, Consultant, Contractor, and Sub-Contractor shall comply with all applicable Federal, State and local laws, rules and ordinances pertaining to equal employment opportunity and non-discrimination, including but not limited to A.R.S. § Title 41, Chapter 4 and Executive Order 99-4

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

#### § A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

#### § A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

#### § A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

#### § A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project. Under this agreement, all construction drawings, specifications, notes, electronic data and other data prepared by the Architect and furnished by the Design/Builder and the Design/Builder's Consultants, shall be considered a prototypical design and shall become property of the Owner to use for reference in construction of structures based on the prototype. The Architect seal shall appear on construction drawings, specifications and other data requiring a seal for prototype structures. Owner acknowledges (1)-building codes differ in differing jurisdictions; that building codes, construction materials and technology change over time; (2) – that each site may have different needs (including but not limited to positioning and foundations); and (3) that each site project therefore requires a separate seal of a qualified design professional in that jurisdiction. The Owner's design professional for each site where the prototypes will be constructed has the Design/Builder's and Architect's permission to refer to and copy the design concepts contained in the construction drawings, specifications notes, electronic data and other data and the site specific design professional shall accept professional responsibility and seal the construction drawings, specifications and other data prepared and used for that specific site.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license. The Owner agrees not to sell or transfer any of the drawings, designs, specifications, notes, electronic data, or other elements of the Contract Documents to a third party for a profit to the Owner or for profit making purposes to any third party. In the case of future reuse of any of the documents by the Owner, the Architects and its registrant-consultant's name and seal shall be removed from the reused document(s) and the Architect and its registrant-consultants shall not be liable to the Owner or to third parties for their reuse.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents. The Design-Builder and Architect shall provide in electronic data format the Instruments of Service. The Owner recognizes that data, plans, specifications, reports, documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the electronic documents provided to the Owner are for informational purposes only and are not intended as an end-product. The Design-Builder and Architect makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Owner agrees

to waive any and all claims against the Design-Builder and Architect and the Design-Builder and Architect's Consultant's relating in any way to the unauthorized use, reuse or alteration of the electronic documents.

~~§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals. If the Contract is terminated by the Owner, provided the Architect has been paid in full for services rendered, all drawings, specifications, electronic data, and other documents relating to the design or observation of Work shall be surrendered forthwith by the Design/Builder to the Owner. The Design/Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its Design Professionals.~~

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

## ARTICLE A.2 OWNER

### § A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

~~§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

### § A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

~~§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations and reports of industry standard investigations of subsurface for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

~~§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.~~

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

~~§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations. *The Design/Builder shall be responsible for the cost of obtaining the following information if the Architect deems such services are necessary to properly carry out the design services required by this Agreement: Professional recommendations from a Land Surveyor, Geotechnical Engineer, or Material Testing Engineer selected by and employed by the Design/Builder. The cost of such services will be inclusive in the Design/Builder's project cost.. Any required surveying, geotechnical and materials testing service performed under this Agreement is performed for the administrative convenience and benefit of the Owner.*~~

*.1 Survey of Site Conditions. A complete and accurate survey of the building site and improvements showing the grades and lines of streets, pavements, and adjoining properties, contours of the building site, and full information as to sewer, water, gas electrical service, telephone lines, or other utilities; and*

*.2 Report on Subsurface Investigations. Test boring or test pits and chemical, mechanical, laboratory or other tests; Owner recognizes that environmental, geologic, and geotechnical conditions can vary from those encountered at the times when and locations where data are obtained, and that such limitation on available data results in some level of uncertainty with respect to the interpretation of these conditions, despite meeting the Required Standard of Care and*

*.3 Additional subsoil investigation, reports, tests and engineering data, that are required by good construction practices.*

*.4 All other tests deemed necessary by the Architect.*

~~§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program. Except for permits and fees, which are the responsibility of the Design/Builder under the Contract Documents, the Owner shall secure and pay for necessary~~

approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

### § A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. ~~Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.~~

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither

this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing. The Owner is the State of Arizona acting by and through the governmental agency designated as Owner in the Owner Design/Builder Agreement and is so referred to throughout the Contract Documents. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or its authorized representative.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. In the event permits are not secured pursuant to A.R.S. § 34-461.D, it shall be the responsibility of the Design/Builder to perform all inspections required by code and typically performed by the authority having jurisdiction.

#### § A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3. Once the Owner determines that sufficient cause exists, the Owner may terminate the Contract without prejudice to any right or remedy the Owner may have, after giving the Design-Builder and its surety seven days' notice by issuing a written Declaration of Default. After expiration of this seven day period, the Owner shall have the sole discretion to permit the Design-Builder to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the Contract.

#### § A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. In the event the Contract is terminated, the Owner may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Design-Builder from the site. The Owner may take possession of the Work and of all of the Design-Builder's tools, construction equipment, machinery, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Design-Builder, and without liability to the Design-Builder except to return them undamaged, reasonable wear and tear excepted, at such time as any such item no longer has utility for completion of the Work, the Owner may also take possession of all materials and appliances stored at the site and finish the Work as the Owner deems expedient. In such case the Design-Builder shall not be entitled to receive further payment until the Work is finished.

### ARTICLE A.3 DESIGN-BUILDER

#### § A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project. It shall be the responsibility of the Design/Builder to insure that the Architect and professionals at the time of performing the design services, have a current

applicable Arizona registration with a current valid license as required by law for such work and the Architect's seal shall appear on construction drawings, specifications and other data requiring a seal for prototype structures.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents with 2006 Arizona Modifications.

#### § A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder. The Design/Builder shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services. The Design/Builder shall authorize and cause the Architect to provide those other services requested by the Design/Builder which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, and Design/Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request. The Design/Builder shall provide and maintain a management team on the Project site to provide contract administration and the Design/Builder shall establish and implement coordination and communication procedures among the Design/Builder, Owner, Design Professionals, Contractors and Subcontractors.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered. Execution of the Contract by the Design-Builder is a representation that the Contract Documents enable the Design-Builder to:

(1) determine the Cost of the Work;

(2) construct the Work outlined therein; and

(3) otherwise to fulfill all its obligations hereunder; including, but not limited to Design-Builder's obligation to construction the Work for the Contract Sum on or before the date(s) of Substantial Completion established in the Contract.

The Design-Builder further acknowledges and declares that it has had sufficient opportunity to visit and examine the site, examine all physical, and other conditions affecting the Work and is fully familiar with all of the conditions affecting the same. In connection therewith, Design-Builder specifically represents and warrants to Owner that it has, by careful examination of the site, the Contract Documents, the soil borings and any data provided by the Owner, satisfied itself as to:

(1) the nature, location, and character of the Project and the site, including, without limitation, the surface and subsurface conditions and all structures and obstruction both natural and man-made, and all surface and subsurface water conditions of the site and the surrounding area;

(2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and

(3) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing and as limited by A.R.S. Title 40, Chapter 2, Article 6.3 (Blue Stake), the Design-Builder shall be solely responsible for locating (and shall locate prior to performing any Work) all active utility lines, telephone company lines and cable, sewer lines, water pipes, gas line, electrical line, including without

limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. If the Design-Builder performs any construction activity knowing or when it is reasonable should know that the activity involves an error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Design-Builder shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. The requirement of reasonableness does not increase the standard of ordinary care required of the Design-Builder.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

After the Owner accepts the Construction Documents and the latest Statement of Cost of the Work the Design/Builder shall assemble the Construction Documents. Such acceptance shall not constitute approval of the adequacy of the Construction Documents and shall not relieve the Architect of the responsibility for design deficiencies, errors, or omissions.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable State of Arizona laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications. Under A.R.S. § 35-214 and § 35-215, the Design-Builder shall retain and shall contractually require each subcontractor to retain all data and other "Records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. At any time during the term of this contract and Five (5) years thereafter, the Design - Builder or any subcontractor's books and records shall be subject to inspection and audit by the State or the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract and where applicable. Upon request, the Design-Builder shall produce a legible copy of any or all such records.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

### § A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal in writing.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof. Within 10 days after the written Notice to Proceed is issued, the Design/Builder shall prepare and submit for the Owner, a schedule of Shop Drawings and an estimated Progress Schedule to indicate the rate of progress and the order of Work that the Design/Builder will accomplish during the first 90 days of the Contract, and also submit a Payment Schedule indicating the percentage of the Contract amount and the anticipated monthly payments required of the Owner during the first 90 days of the Contract.

Within 60 days after the award of the Contract, the Design/Builder shall submit for review by the Owner, a Schedule of Shop Drawings and a Progress Schedule, such as a bar chart or other scheduling method identified in the Specifications, to indicate the rate of progress and practicable order of Work that the Design/Builder shall accomplish for all of the contract Work, incorporating the 90 day Progress Schedule previously submitted. The purpose of this scheduling requirement is to assure adequate planning and execution of the Work, and to facilitate evaluation of the progress of the Work. The Schedule shall indicate the dates for starting and completing various aspects of the Work, including the submittal, approval, procurement, fabrication, and delivery of major items, material, and equipment as well as on-site construction activities. If these initial Schedules are not submitted within 90 days of the award of the Contract, the Owner may withhold progress payments.

The Design/Builder, upon award of the Contract (or where Shop Drawings, Samples or the like are required, upon receipt of their approval), shall place orders for all materials, Work, fabrication and equipment necessary to meet the approved progress schedule. The Design/Builder shall keep the Architect informed and shall notify the Architect promptly in writing of any materials, Work, fabrication and equipment, which may not timely be available for the purposes of the Contract. The Design/Builder shall provide regular monitoring and updating of the Progress Schedule on a monthly basis, or more frequently as required by the conditions of the Work. The Design/Builder shall provide the Owner with monthly Update Reports indicating progress achieved and activities commenced or completed within the last month.

With each monthly update the Design/Builder shall submit a Narrative Report, which shall include a description of current and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action taken or proposed. If the project is behind schedule in any month, the Design/Builder in that month's narrative report shall indicate precisely what measures it will take in the next thirty days to put the Work back on schedule. Periodic progress meetings shall be held with the Owner and shall be conducted by the Design/Builder.

The Design/Builder shall maintain a daily log of construction activities for each calendar day of the Contract Time, using the form approved by the Owner. The Design/Builder shall document all activities at the project site including:

- .1 weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job site, and any other weather conditions which adversely affect Work at the site;
- .2 soil conditions which adversely affect Work at the site;
- .3 the hours of operation by Design/Builder and Subcontractor personnel;
- .4 the number of Design/Builder and Subcontractor personnel present and working at the site, by subcontract and trade;
- .5 the equipment active or idle at the site;

6. a description of the Work being performed at the site;
7. any unusual or special occurrences at the site;
8. materials received at job site by type and approximate quantity; and
9. a list of all visitors to the site.

The Design/Builder shall provide copies of the daily logs to the Owner monthly or more frequently if requested. The inclusion of information in the daily log does not satisfy those reports, communication or notices required by the Contract Documents

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. ~~In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.~~

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the written consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## § A.3.5 WARRANTY

§ A.3.5.1 *With the exception of professional services provided by the Design-Builder, The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, The Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.*

§ A.3.5.2 Neither the final payment nor any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Design/Builder or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Design/Builder guarantees that the Work will conform to the Contract Documents.

§ A.3.5.3 If the Design/Builder fails to remedy any defects or damage, the Owner may correct the Work or repair the damages, and the cost and expense incurred in such event shall be paid by or be recoverable from the Design/Builder or Surety, or offset against any amounts owing to the Design/Builder.

§ A.3.5.4 The building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Design/Builder's control. The Design/Builder, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and do any work necessary to make the building(s) watertight. The Design/Builder also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the building(s) to original condition.

## § A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

## § A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by State of Arizona laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable State or Federal laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable State or Federal laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

## § A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

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

- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

#### § A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

#### § A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

~~§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work. *The Design-Builder shall maintain at the site for the use of the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders field orders, approved Shop Drawings, Architects Supplementary Instructions, requests for information and other Contract related documents and other Modifications, if any, in good order and marked currently promptly by the Contractor to record all approved field changes and selections made during construction.*~~

#### § A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. *The Record Drawings shall consist of a set of drawings in electronic format which indicate all field changes that were made to adapt to field conditions, changes resulting from Contract Change Orders and all concealed and buried installations of piping, conduit and utility services changed as part of the Work. All buried and concealed items both inside and outside the facility shall be accurately located on the Record Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The Record Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color.*

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work. *The Design-Builder shall also maintain on-site all available catalog data, price lists, manufacturers' operating and maintenance instruction, schematics, certificates, warranties, and guarantees. These shall be available to the Owner and shall be delivered for submittal to the Owner upon substantial completion of the Work.*

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents. The Design-Builder will provide assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.11.7 The Design/Builder shall provide coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.

#### § A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Owner shall specify a bench mark and control points which shall determine the initial points of reference for construction of the Project. The Contractor shall establish and maintain all building and construction grades, lines, levels and benchmarks and shall be responsible during the course of Construction for accuracy and protection of same. A licensed Civil Engineer or Surveyor approved by the Architect shall establish, and if necessary re-establish benchmarks and control points

#### § A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. Any part of the finished Work damaged during installation or prior to substantial completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced

#### § A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

#### § A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

### § A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

### § A.3.17 INDEMNIFICATION

§ A.3.17.1 ~~To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17. The parties to this Contract agree that the Owner will be indemnified and held harmless by the Design/Builder for their vicarious liability as a result of own negligent acts, errors, and omissions.. The parties further agree that each party to this Contract is responsible for their own negligence.~~

§ A.3.17.2 ~~In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~

§ A.3.17.3 The Design-Builder shall comply with all applicable Federal, State and local laws, rules and ordinances pertaining to equal employment opportunity and non-discrimination, including but not limited to A.R.S. § Title 41, Chapter 4, Executive Order 99-4

**§A.3.18.1 Federal Immigration Laws, Compliance by State Contractors:** *By Entering into the Contract, the Design-Builder warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Design-Builder shall obtain statements from its Contractors, Subcontractors certifying compliance and shall furnish the statements to the procurement officer upon request. These warranties shall remain in effect through the term of the Contract. The Design-Builder and its Contractor, Subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the I-9 forms are available for download at USCIS.GOV.*

*The State may request verification of compliance for any Design-Builder, Contractor, or Subcontractor performing work under the Contract. Should the State suspect or find that the Design-Builder, Contractor or any of its Subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Design-Builder, Contractor or Subcontractor. All costs necessary to verify compliance are the responsibility of the Design-Builder, and Contractor.*

**§ A.3.18.2 Procedures for Random Reviews:** *The Procurement Compliance, Administration and Policy Office (PCAP) shall perform random reviews of State Design-Builders and Contractors to verify compliance with Executive Order 2005-30 and this publication.*

**I.** *If a Contractor fails to comply with this request or fail to timely respond to a random review, the procurement officer shall issue a written notification of default to the Design-Builder, Contractor or Subcontractor.*

If a Design-Builder, Contractor or Subcontractor fails to cure the default in a timely manner or to provide adequate assurance that the default will be cured, the procurement officer may take appropriate actions, including termination of the Contract and seek appropriate remedies. A Design-Builder, Contractor or Subcontractor's failure to comply with this policy can result in debarment or suspension.

## ARTICLE A.4 DISPUTE RESOLUTION

### § A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

1. If the Design-Builder incurs damages related to expenses caused by a delay for which the Owner is responsible, which is unreasonable under the circumstances, and which was not reasonably contemplated by the parties at the time of formation of this Contract, then the parties shall resolve the Design-Builder's claim pursuant to A.R.S. § 41-2617. The Design-Builder shall notify the Owner in writing within five working days of such delay, specifying why the Owner is believed by the Design-Builder to be responsible for the delay and the percentage extent to which the Design-Builder believes the Owner is responsible. Failure to provide such timely notice constitutes a waiver of all rights under A.R.S. § 41.2617.
2. Any and all claims for extension of time or damages because of a delay shall be made in writing to the Owner, not more than 21 calendar days from the beginning of the delay or within 21 days after the Claimant first should have recognized the condition giving rise to the delay. The notice shall indicate the cause of the delay, the anticipated length of the delay, and the probable effect of the delay upon the progress of the Work.
3. Except to the extent a delay is caused by the Owner and is unreasonable in the circumstances, an extension of time shall be the Design-Builder's sole remedy for delay. The Design-Builder expressly agrees not to make, and hereby waives any claim for damages against the Owner on account of an delay, obstruction, or hindrance for any cause whatsoever, and agrees that the Design-Builder's sole right and remedy in the case of an delay shall be an extension of the time fixed for completion of the Contract.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and

Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

**§ A.4.1.5 Claims for Additional Cost.** If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

**§ A.4.1.6** If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

#### **§ A.4.1.7 Claims for Additional Time**

**§ A.4.1.7.1** If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ A.4.1.7.2** If adverse weather conditions are the basis for a Claim for additional time, 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 scheduled construction.

**§ A.4.1.8 Injury or Damage to Person or Property.** If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ A.4.1.9** If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

**§ A.4.1.10 Claims for Consequential Damages.** This paragraph deleted per direction of ADOA/Risk Management Office 9/24/09.

**§ A.4.1.11** If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

#### **§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES**

**§ A.4.2.1 Decision by Neutral.** If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

**§ A.4.2.2 Decision by Owner.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the

Owner. Any claims and disputes that arise shall be resolved pursuant to the Arizona Procurement Code (Chapter 23, Title 41, A.R.S.) and the Rules of the Director of the Department of Administration.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties, ~~but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.~~ The Parties agree that the Arizona Procurement Code and rules issued there under shall be the exclusive means for resolving disputes arising under the Contract.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner will ~~may, but is not obligated to,~~ notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner will ~~may, but is not obligated to,~~ notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court for Maricopa County, and then only after exhaustion of all administrative remedies~~

#### § A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § A.4.4 ARBITRATION ADMINISTRATIVE RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. Any dispute between the Design-Builder and the Owner or between the Design-Builder and the Owner's authorized representative arising out of or relating to the Contract, shall be resolved pursuant to the Arizona Procurement Code (to the extent required by A.R.S. § 12-1518),

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6. The Parties agree that the Arizona Procurement Code and rules issued there under shall be the exclusive means for resolving disputes arising under the Contract.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder

has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 **Claims and Timely Assertion of Claims.** The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 **Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to object within 10 working days reply promptly shall constitute notice of no reasonable objection. The Design-Builder's proposal shall contain a list of its Architects, Contractor and Subcontractors and material suppliers. Within ten working days after award of the Contract the Owner will notify the Design-Builder in writing whether the Owner has any reasonable objection to any person or entity listed on the list of Architects, Contractor, Subcontractors and material suppliers

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection or who has consulted or assisted the Architect to plan or design the Project. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed listed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 ~~The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.~~ The Design-Builder shall make no substitution of any Architect, Contractor, Subcontractor, person or entity listed on the list of Architects, Contractor, Subcontractors and material suppliers required to be submitted with the Contractor's Proposal without the advance written consent of the Owner. The Contract Sum shall be decreased by the difference in cost occasioned by a substitution and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for any substitution requested by the Contractor

## § A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

#### ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces 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 Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

##### § A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

##### § A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

## ARTICLE A.7 CHANGES IN THE WORK

### § A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

### § A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

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

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

### § A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

*The cost to the Owner resulting ONLY from an increase in the Work shall be determined in one of the following ways:*

- 1 by unit prices stated in the Contract Documents;*
- 2 cost as defined below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus a fee, as identified in 7.2.6; such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly attributable to the change in Work:*
  - .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance.*

- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 additional costs of supervision and field office personnel directly attributable to the increase in the Work; and fees paid to the Architect, engineers and other professionals.
- .5 costs of premiums for all bonds and insurance, permit fees and sales, use or similar taxes relating to the Work.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into ~~recorded~~ as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner in accordance with Section A.7.2 ~~on~~ the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- ~~.1 additional costs of professional services;~~
- ~~.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~
- ~~.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~
- ~~.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;~~
- ~~.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~
- ~~.6 additional costs of supervision and field office personnel directly attributable to the change.~~

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment, ~~accompanied by a Change Order indicating the parties' agreement with part or all of such costs.~~ For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4. Payments for Construction Change Directive items, when added to contract work payments, shall not exceed the authorized Contract Sum. Final payment on a Construction Change Directive shall not occur until incorporated in a Change Order.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order on the A.I.A. G701 Form.

#### § A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build

Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

## ARTICLE A.8 TIME

### § A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date ~~stated in the Agreement unless provision is made for the date to be fixed~~ in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

### § A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

§ A.8.2.3 The Design-Builder shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Progress Schedule and to ~~proceed expeditiously with adequate forces and shall~~ achieve Substantial Completion within the Contract Time.

### § A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 ~~If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder’s control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines~~ are justifiable ~~may justify~~ delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 ~~This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.~~ Extension of time provided for the completion of the Work shall be the Contractor’s sole remedy for delay except as provided by statute, including A.R.S. § 41-2617, and except to the extent that interfering acts of the Owner continue after Contractor’s written notice to Owner of such interference. The Owner’s exercise of any of its rights under the Contract, including, without limitation, its rights under Article 7, Changes in the Work or the Owner’s exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as interference with the Contractor’s performance of the Work.

§ A.8.3.4 Liquidated Damages: If the Design-Builder neglects, fails or refuses to substantially complete the Work within the Contract Time(s), or any extension granted by Change Order, then the Design-Builder shall, as part consideration for the award of this contract, pay to the Owner a sum of not less than \$600.00 (which sum may be modified by other provision of the Contract Documents), not as a penalty, but as liquidated damages for such

breach of Contract, for each and every calendar day that the Design-Builder fails to substantially complete the Work. If the Design-Builder neglects, fails or refuses to totally and finally complete the Work within 30 days after the actual date of Substantial Completion or the time(s) specified therefore in other provisions of the Contract Documents, or any extension granted by Change Order, then the Design-Builder shall, as part consideration for the award of this contract pay to the Owner a sum of not less than \$200.00 (which sum may be modified by other provisions of the Contract Documents), not as a penalty, but as liquidated damages for such breach of Contract, for each and every calendar day that the Design-Builder fails after the time(s) stipulated in the contract to totally and finally complete the Work.

§ **A.8.4 Value Engineering**

- 8.4.1 For the purpose of this Contract, Value Engineering shall be defined as a formal and voluntary process, by which the Design/Builder may suggest methods for reducing the Contract Sum, through proposed changes in the work that do not impair essential functions or characteristics of the project.
- 8.4.2 The Design/Builder is encouraged to provide to the Owner, Draft Value Engineering Proposals (DVEP) for prospective Value Engineering opportunities. Each DVEP shall include a written description of the proposed change, the probable effect on the project and the prospective estimated cost reductions and costs to the Owner that will result from the DVEP. The Owner at its sole discretion, may authorize preparation of a formal Value Engineering Proposal, reject the proposed DVEP, request additional information, request or suggest modifications to the DVEP or take another appropriate action as best serves the interest of the Owner.
- 8.4.3 If authorized by the Owner, the Design/Builder shall prepare and submit to the Owner a formal Value Engineering Proposal (VEP). The VEP shall include sufficient information for the Owner to make an informed decision regarding the VEP and to accurately determine costs and saving resulting from the VEP. At a minimum, the VEP shall contain the following information:
- 8.4.4 A complete description of the VEP, comparing the proposed change to the existing Contract and the advantages and disadvantages of the proposed change, including any changes in Contract Time, service life, life cycle (contingent) costs, security, public welfare, economy and ease of operations and maintenance, facility integrity, safety, aesthetics and other relevant factors.
- 8.4.5 Drawings and specifications showing the proposed changes relative to the existing Contract, with supporting calculations.
- 8.4.6 Manufacturer, model numbers and descriptive literature/specifications for proposed equipment and material substitutions and the names and license number for any proposed subcontractor changes.
- 8.4.7 A detailed and complete analysis of costs showing the costs and quantities to be replaced to the costs and quantities of the proposed change and a detailed summary of the proposed reduction in the Contract Sum. In calculating costs, the Design/Builder shall consider all relevant costs, including labor, materials, subcontracts, bonds and insurance. If accepted by the Owner, these costs shall serve as the basis for calculating Change Orders.
- 8.4.8 Any other relevant information or information required by the Owner.
- 8.4.9 Unless otherwise agreed upon, the Owner shall respond to the VEP within thirty (30) days following receipt. The Owner may accept the VEP, in whole or in part, as submitted by the Design/Builder, request additional information from the Design/Builder, negotiate modifications to the VEP with the Design/Builder or deny the VEP.
- 8.4.10 If the VEP is accepted by the Owner, the Contract shall be modified by issuance of a Construction Change Order, pursuant to Article 8 of the Contract. The Change Order shall refer to the specific VEP(s) and shall include any conditions for which authorization of the VEP is based. The Change Order shall include any adjustment to the Contract Sum, based on the VEP. The Change Order shall include a Design/Builders Fee of 40% of the net reduction of the Contract Sum resulting from the VEP. This fee shall be included in the Change Order for the VEP and shall be due and payable in

- accordance with the terms and conditions of the Contract during the construction period. 100% of the Program savings derived through Value Engineering will be credited to the State during the design phase.
- 8.4.11 If the Draft Value Engineering Proposal or the Value Engineering Proposal is rejected, the Owner shall provide written notice of the rejection, citing the reasons for the rejection. If the Draft Value Engineering Proposal or the Value Engineering Proposal is rejected, the Design/Builder shall have no rights to claim costs incurred to prepare the Draft Value Engineering Proposal or the Value Engineering Proposal, or additional costs for delays resulting from the rejection of the Draft Value Engineering Proposal or the Value Engineering Proposal.
- 8.4.12 The Design/Builder and Owner recognize that prompt submissions, reviews and responses regarding value engineering proposals are essential for the proposals to be effective and to avoid disruptions and delays of the work and all parties agree to act promptly in all respects with regard to Value Engineering Proposals.
- 8.4.13 The Design/Builder may withdraw a Draft Value Engineering Proposal or a Value Engineering Proposal at any time prior to acceptance of the Draft Value Engineering Proposal or the Value Engineering Proposal by the Owner, by issuance of the Value Engineering Proposal Change Order.
- 8.4.14 The Design/Builder is not entitled to fees resulting from reductions to the Contract Sum resulting from changes initiated by the Owner and not based on a Draft Value Engineering Proposal or a Value Engineering Proposal submitted by the Contractor.
- 8.4.15 The Owner shall have sole authority for acceptance or rejection of a Draft Value Engineering Proposal or a Value Engineering Proposal, either in whole or in part.
- 8.4.16 The fee paid to the Design/Builder for the Value Engineering Proposal shall constitute full and complete payment for the Value Engineering Proposal. Once accepted, the Value Engineering Proposal shall become the property of the Owner and shall contain no restrictions as to the use or future use of the Value Engineering Proposal. This provision shall not deny any rights of the Design/Builder, under the law, with respect to patented materials and processes.
- 8.4.17 If a Change Order is issued pursuant to a Value Engineering Proposal, all terms and conditions of the Contract shall apply to the changed Work.
- 8.4.18 If the Owner rejects work performed as a result of a Value Engineering Proposal, the Owner may terminate the Value Engineering Proposal and direct the Design/Builder to complete the affected portion of the Work in accordance with the original Contract. If a Value Engineering Proposal is terminated, the Contract Sum shall be adjusted for the amount of the rejected Value Engineering Proposal and the Design/Builder shall not be entitled to any costs of fees associated with the rejected Value Engineering Proposal

## ARTICLE A.9 PAYMENTS AND COMPLETION

### § A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

### § A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 ~~Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum. Before the first Application for Payment, the Design/Builder shall submit to the Owner a schedule of values allocated to various portions of the~~

Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design/Builder's Applications for Payment.

#### § A.9.3 APPLICATIONS FOR PAYMENT

~~§ A.9.3.1 At least ten days before the date established for each progress payment, t~~ The Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, ~~if required,~~ and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents: Except to the extent otherwise provided by statute, including A.R.S. § 41-2577, payments on account of this Contract will be made monthly as Work progresses. The Design-Builder shall submit to the Owner consistent with AIA G702 and G703, an application for each payment, and, if required, receipts or other vouchers showing its payments for materials suitably stored at the construction site and labor, including applications from and payments to Subcontractors.

~~§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders. Payments for Construction Change Directive items, when added to contract work payments, shall not exceed the authorized Contract Sum. Final payment on a Construction Change Directive shall not occur until incorporated in a Change Order.~~

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. ~~If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. All material and Work covered by a paid partial payment shall thereupon become the sole property of Owner. Nothing in this Subparagraph shall be construed as relieving the Contractor from sole responsibility for care and protection of materials and Work upon which payments have been made or restoration of any damaged Work or as a waiver of the right of the Owner to require fulfillment of all terms of the Contract Documents~~

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### § A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ The Owner may withhold a payment in whole or in part to the extent reasonably necessary and required by A.R.S. § 41-2577 to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect

the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied; or failure to begin remedial action to repair defective work within five working days following demand;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 ~~reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;~~ or the Owner shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the construction site, as checked and approved by the Architect. In lieu of the retainage the Contractor may furnish securities as provided by A.R.S. §§ 35-155 or 41-2576 and 41-2577 and A.A.C. R2-7-506 and R2-7-507. The balance of 10% of the estimate or substituted securities shall be retained by the Owner until the Work is 50% completed at which time the retainage or substituted securities shall be reduced to 5% of the estimate, provided the Contractor is making satisfactory progress on the contract and there is no specific cause or claim allowing or requiring a greater amount to be retained. Thereafter, the Owner shall pay the Contractor 95% of the value of the Work in place and suitably stored at the construction site unless and until the Owner determines that satisfactory progress is not being made or there is a specific claim or cause allowing or requiring a greater amount to be retained;
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

#### § A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 *As required by A.R.S. § 41-2577,* ~~t~~The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 *As required by A.R.S. § 41-2577,* ~~t~~The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 ~~A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.~~ Neither the final payment nor any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Contractor guarantees that the Work will conform to the Contract Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in the time frames established by A.R.S. § 41-2577 - Section A.9.5.4, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon fourteen ~~seven~~ additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in A.R.S. § 41-2577 ~~the Design-Build Documents~~.

#### § A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion which the Owner agrees to accept separately thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use. Within seven days after receipt of the Contractor's written request for a Substantial Completion Inspection, the Architect shall notify the Contractor of the exact time and date that the inspection of the Work or designated portion will be held. Prior to Substantial Completion and within sufficient time to allow the Architect' review, the Contractor shall compile all Record Drawings, catalog data, manufacturers' operating and maintenance instructions, manufacturers' specifications, schematics, certificates, warranties, guarantees, catalogs and price lists for any equipment, materials, supplies or parts used in the inspection, calibration, maintenance or repair of the equipment installed as part of the Work and other related documents required by this Contract and submit them to the Architect. The Architect shall reviews the documents for accuracy and compliance with the Contract Documents and deliver them to the Owner.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected by submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the Work, or the designated portion, is functionally ready for occupancy by the Owner and that the remaining incomplete or defective Work required by the Contract Documents shall be completed within the time specified in the Contract Documents for Final Completion and the Contractor shall proceed promptly to complete and correct items on the list, prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. Satisfactory completion of all items on the Final Punch List shall be final completion of the Work in accordance with Section 8.3.4, except as further provided by Section 9.10. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties

required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion, and except as may be specified in the Contract Documents. All representations and warranties made by the Design-Builder under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-1510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations to actions prescribed in A.R.S., Title 12, Chapter 5.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and final punch list and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. The Project shall not be deemed substantially complete until the Certificate is issued. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The 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 the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the 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 the 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 completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the 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 the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 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 Design-Build Documents.

§ A.9.9.4 In the event of partial occupancy before Substantial Completion, the Contractor shall cooperate with the Owner in making available for the Owner's use and benefit at Owner's expense such building services as heating, ventilating, cooling, water, lighting, telephone, elevators and security for the portion or portions to be occupied, and if the Work required to furnish such services is not entirely completed at the time the Owner begins to occupy the aforesaid portion or portions, the Contractor shall make every reasonable effort to complete such Work or make temporary provision s for such Work as soon as possible so that these building services may timely be put into operation and use.

#### § A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining ~~retained percentage~~ retainage or substituted securities will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work ~~for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner)~~ have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents ~~to will~~ will remain in force ~~after final payment is currently in effect~~ through the warranty period and will not be cancelled or allowed to expire until at least 30 days' prior written notice or release of substituted securities has been given to the Owner, (3) ~~a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents,~~ (4) consent of surety, if any, to final payment, and (5) ~~(4)~~ (4) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the

Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees. The rights and liabilities of the parties when a hazardous substance is encountered are specified by A.R.S. § 32-1129.01.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

### § A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

### § A.10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and

A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### § A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner. *In the event that the Design-Builder or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Design-Builder's services, the Design-Builder may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.*

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7. *The rights and liabilities of the parties when a hazardous substance is encountered are specified by A.R.S. § 32-1129.01.*

§ A.10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.~~

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

#### ARTICLE A.11 INSURANCE AND BONDS DESIGN-BUILDER'S LIABILITY INSURANCE:

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11. Design-Builder, Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Design-Builder, his agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

#### § A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized, or approved by the Department of Insurance to do business in the State of Arizona, and rated at least A-, VII, in the current A.M. Bests, the minimum insurance coverage below:

~~1~~ claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

1 Insurance, to limits and coverages as required by the State of Arizona Workers Compensation statutes, to protect against claims under workers compensation, employers' liability, disability benefit and other similar employee benefit acts pertinent to this contract, unless otherwise amended.

Workers Compensation: Statutory for State of Arizona

Employers Liability (Coverage B):

\$500,000 each accident;

\$500,000 each employee/disease;

\$1,000,000 policy limit/disease.

Policy shall include endorsement for all State coverage for state of hire.

Policy shall contain a waiver of subrogation against the State of Arizona for losses arising from work performed by the Contractor.

This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form Commercial General Liability insurance, while engaged in the performance of the work insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU (explosion, collapse, and underground). The policy shall contain a severability of interests' provision. Minimum limits of liability required of the Contractor are as follows:

- .1 \$1,000,000 bodily injury and property damage each occurrence
- .2 \$2,000,000 general aggregate (annual)
- .3 \$1,000,000 products/completed operations aggregate, and
- .4 \$1,000,000 personal and advertising injury
- .5 \$ 50,000 fire
- .6 \$ 10,000 medical

- ~~.2~~ claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage; **which are sustained (1) by a person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by another person.**
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; **Commercial Automobile Liability insurance with respect to all vehicles used in the performance of work whether owned, non-owned, borrowed, leased, or hired with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage. Contractor shall name the State of Arizona and Owner as additional insured for the Owners vicarious liability**
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be ~~written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater.~~ **endorsed to include the State of Arizona and Owner, its agents and employees as additional insured with the exception of workers compensation and professional liability insurance for vicarious liability, and shall stipulate that the insurance afforded shall be primary insurance and that any insurance carried by the Owner, or by its agents or employees shall be excess and not contributory insurance to that provided by the Contractor. Additional Insured endorsement is not required for Workers' Compensation.** Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment, **unless otherwise required by the Contract or any amendment thereto.**

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work **by the contractor as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. These certificates shall identify this contract. Such certificates of insurance policies providing the required coverages conditions and limits are in full force and effect.** These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. ~~Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.~~

§ 11.2.4 Failure on the part of the Contractor to procure or maintain the required insurance shall constitute a material breach of contract, upon which the Owner may immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Contractor from the Owner. Costs for coverages in excess of those required shall not be charged to the Owner without prior written approval of the Owner.

§ 11.2.5 The Owner reserves the right to request and receive, within ten calendar days, certified copies of any or all of the above policies and endorsements.

§ 11.2.6 Contractor and its insurers providing the required coverages shall waive their rights of recovery against the Owner and its agents and employees

§ 11.2.7 Any required design service performed under this Agreement is performed for the administrative convenience and benefit of the Owner. The Owner shall be considered the third-party beneficiary of all contracts for design services provided under this contract and the Owner shall have the right to enforce the duties of consultants under those contracts. If the Contractor selects a Design Professional to provide required services and requires the design professional to carry Professional Liability Insurance as specified below, the Owner agrees to look to the registrant for any and all claims and liabilities arising from the performance of the services. The Contractor shall require all Design Professionals to carry Professional Liability Insurance with a minimum limit of \$1,000,000. (Each Claim and/or Each Wrongful Act and/or Each Loss) with aggregate limit of \$3,000,000 and to furnish the Contractor with certificates of insurance for the coverage. The Retroactive Coverage Date (if written on a Claims-Made form) shall be the same as the effective date or earlier of this contract. The policy shall cover professional misconduct or lack of ordinary skill. The policy shall contain an Extended Claim Reporting Provision of not less than one year following termination of the policy.

#### § A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner at its option, may purchase and maintain other insurance for self-protection against claims, which may arise from operations under the Contract. shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Owner The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in Arizona the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement costs basis without voluntary deductibles, written on a builder's risk, "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earth movement, water damage, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the

cost thereof shall be charged to the Owner. If the ~~Design-Builder~~ Owner, Subcontractor or Sub-subcontractors are is damaged by the failure or neglect of the ~~Owner~~ Design-Builder to purchase or maintain insurance as described above ~~without so notifying the Design-Builder in writing~~, then the ~~Owner~~ Design-Builder shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires minimum deductibles, the ~~Owner~~ Design-Builder shall pay costs not covered because of such deductibles. If the Contractor or insurer increases the required minimum deductibles above the amounts so identified or if the Contractor elects to purchase this insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

§ A.11.4.1.4 Unless otherwise provided in the Contract Documents, ~~This~~ property insurance shall cover portions of the Work stored off the site, after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.1.6 The policies required by Section 11.3.1 shall be endorsed to include the State of Arizona and Owner, its agents and employees as additional insureds for vicarious liability and shall stipulate that the insurance afforded shall be primary insurance and that any other insurance or self-insured retention providing coverage to the State of Arizona and Owner, or to its agents or employees, shall be excess and not contributory insurance to the insurance provided by Contractor.

§ A.11.4.1.7 The Contractor shall purchase and maintain, and furnish evidence of, Builder's Risk Insurance. At a minimum, the policy limits of such insurance shall be equal in face amount to the full Contract Amount. At the option of the Owner or if called for elsewhere in the Contract Documents, the Contractor shall furnish evidence of such insurance with limits up to the full value of the building under construction or renovation. Such insurance shall include the interest of the Owner, its employees and agents, and of the Contractor, its employees and agents, and of all Subcontractor, Sub-subcontractors and their employees and agents.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance or self-insurance program required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance or self-insurance program as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.~~

§ A.11.4.4 If the ~~Design-Builder~~ Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the ~~Owner~~ Design-Builder shall, if possible, include such insurance, and the cost thereof shall be charged to the ~~Design-Builder~~ Owner by appropriate Change Order. If such insurance is not obtainable by the Contractor, the Contractor shall immediately notify the Owner

§ A.11.4.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ A.11.4.6 Before an exposure to loss may occur, the ~~Owner~~ **Design-Builder** shall file within 14 calendar days of request, with the ~~Design-Builder~~ **Owner** a certified copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least ~~30~~ 50 days' prior written notice has been given to the ~~Design-Builder~~ **Owner**

**§ A.11.4.6.1 The Owner requires the right to request and receive, within ten calendar days, additional certified copies of any or all of the above policies and endorsements.**

**§ A.11.4.6.2 Failure on the part of the Design-Builder to procure or maintain the required insurance shall constitute a material breach of contract, upon which the Owner may immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by Design-Builder to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Design-Builder from the Owner.**

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their contractors, sub-contractors, and sub-subcontractors, agents and employees and each subcontractor, sub-subcontractor described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other; and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, ~~except such rights as they have to proceeds of such insurance held by the Owner as fiduciary.~~ The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged

§ A.11.4.8 A loss insured under ~~Owner's~~ **Design-Builder's** property insurance shall be adjusted by the ~~Owner~~ **Design-Builder** as fiduciary and made payable to the ~~Owner~~ **Design-Builder** as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the ~~Owner~~ **Design-Builder** as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the ~~Owner's~~ **Design-Builder's** duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The ~~Owner~~ **Design-Builder** shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work, ~~in accordance with Article A.7.~~

§ A.11.4.10 The ~~Owner~~ **Design-Builder** as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the ~~Owner's~~ **DOA, Risk Management Section objects orally or in writing a reasonable time period after DOA, Risk Management Section is notified of the occurrence of a loss to the Design-Builder's** exercise of this power; The ~~Owner~~ **Design-Builder** as fiduciary shall, in that case, make settlement with insurer in accordance with the directions of the DOA, Risk Management Section and shall distribute the insurance proceeds in accordance therewith. ~~in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

## § A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract. **Within five days following execution of Amendment No. 1, the Design-Builder shall file with the Owner, a performance bond and payment bond on State approved forms in the full amount of the Contract pursuant to A.R.S. § 41-2574. The bonds required by this section shall be provided solely by one or more surety companies holding a Certificate of Authority to transact surety business in this State issued by the Director of the Department of Insurance pursuant to A.R.S. § 20, Chapter 2, Article 1. The surety bond or bonds shall not be executed by individual surety or sureties, even if the requirements of A.R.S. § 7-101 are satisfied**

**§ A.11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.**

## ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

### § A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

### § A.12.2 CORRECTION OF WORK

#### § A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

#### § A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, **or for a period of six months after completion of the corrective Work, whichever is longer.**

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build 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.

#### § A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

#### ARTICLE A.13 MISCELLANEOUS PROVISIONS

##### § A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the State of Arizona, ~~place where the Project is located~~.

##### § A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

~~§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.~~

##### § A.13.3 WRITTEN NOTICE TRAINING, ASSIGNMENTS; PUBLICITY

~~§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.~~

~~*At the option and expense of the Owner, unless otherwise provided in the Specifications, maintenance and operating instruction sessions may be videotaped. The planning for instruction sessions shall allow for taping.*~~

§ A.13.3.2 The Owner and Design-Builder recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the ultimate purchaser. Therefore, the Contractor hereby assigns to the Owner any and all claims for such overcharges. The Contractor shall include this Section in all subcontracts, except subcontracts for standard commercial supplies or raw materials and shall require all Subcontractors at all tiers to likewise assign all claims for overcharges to the Owner.

§ A.13.3.3 The Design -Builder shall not assign any of the funds to be received under the Contract unless the Contractor has given prior written notice to the Owner and the Owner has no reasonable objection to the assignment.

§ A.13.3.4 The Design-Builder shall not divulge information concerning this Project to anyone (including, without limitation, information in applications for permits, variances, etc.) without the Owner's prior written consent. The Contractor shall obtain a similar agreement from Subcontractors, material men, consultants and others employed at every tier. The Owner reserves the right to release all information as well as to time, its releasee, form and content. This requirement shall survive the expiration of the Contract.

#### § A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### §A.13.5.7 RECORD DRAWINGS

The Record Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from Contract Change Orders and all concealed and buried installations of piping, conduit and utility services changed as part of the Work. All buried and concealed items both inside and outside the facility shall be accurately located on the Record Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The Record Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. Design-Builder is not responsible for any errors or omissions in the information provided by third parties that are not a subcontractor of the Design-Builder nor an agent of the Design-Builder that are included into the record drawings

#### § A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

##### § A.13.6.1 As between the Owner and Design-Builder:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, 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 issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, 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 Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

#### ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

##### § A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 ~~an act of government, such as~~ a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8. or
- .5 **the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents, with respect to the progress of the Work, and the Design-Builder has given seven days' written notice to the Owner and the Architect of the details of such failure.**

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion the Project, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

#### § A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract ~~if the Design-Builder:~~ **upon the repeated occurrence of and failure to correct any one or more of the following:**

- .1 if the Design-Builder persistently or repeatedly refuses or fails to supply sufficient skilled workmen or suitable materials or equipment;** enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors; or if the Design-Builder fails to make prompt payments to subcontractors or suppliers at any tier, or for labor, materials or equipment;**
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; if the Design-Builder fails to comply with laws, ordinance, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction or specified by this Contract** or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents. if the Design/Builder refuses or fails to prosecute the Work, or any separable part, with such diligence as will ensure its completion within the agreed upon time; or if the Design/Builder fails to complete the Work within such time.**
- .5 if the Design/Builder fails to follow any reasonable instruction by the Architect or the Owner;**
- .6 if the Contractor performs Work which deviates from the Contract Documents; or**
- .7 if the Contractor otherwise violates in any material way any provisions of requirements of the Contract Document.**

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety: **Once the Owner determines that sufficient cause exists, the Owner may terminate the Contract without prejudice to any right or remedy the Owner may have, after giving the Design/Builder and its surety seven days' notice by issuing a written Declaration of Default. After expiration of this seven day period, the Owner shall have the sole discretion to permit the Design/Builder to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the Contract**

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;**
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and**
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.**

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished. **In the event the Contract is terminated, the Owner may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The Owner may take possession of the Work and of all of the Contractor's tools, construction equipment, machinery, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, and without liability to the Contractor except to return them undamaged, reasonable wear and tear excepted, at such time as any such item no longer has utility for completion of the Work, the Owner may also take possession of all materials and appliances stored at the site and finish the Work as the Owner deems expedient. In such case the Contractor shall not be entitled to receive further payment until the Work is finished.**

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds the direct and indirect costs and expenses of completing finishing the Work including compensation for additional professional and consultant services, and other damages incurred by the Owner and not expressly waived, such excess shall be used to pay paid to the Design-Builder for the Work it performed and other damage incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. In exercising the Owner's right to prosecute the completion of the Work the Owner shall have the right to exercise its sole discretion as to the manner and methods of completing Work. In the event that the Owner accepts bids for corrective Work or completion of the Project, the Contractor shall not be eligible for the award of such contracts.

§ A.14.2.5 The Owner shall have the option of requiring any, all or none of the Subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work

§ A.14.2.6 If the Owner takes over the Work, unexecuted orders entered into by the Design-Builder for performance of any part of the Work will be effective upon acceptance by the Owner in writing, and only as to those subcontracts and purchase orders which the Owner designates in writing. The Owner may accept the assignment at any time during the course of construction prior to Final Completion. All subcontracts and purchase orders shall provide that they are freely assignable by the Design-Builder to the Owner and its assigns. The assignment is part of the consideration to the Owner for entering into this Contract and may not be withdrawn prior to Final Completion of the Work.

§ A.14.2.7 In the event the Contract is terminated and it is determined for any reason that the Design-Builder was not in default, the termination shall be deemed a Suspension for Convenience of the Owner and the rights and obligations of the parties shall be determined in accordance with Section 14.3

§ A.14.2.8 This Contract may be terminated by the Owner under the conditions stated in A.R.S. § 38-511.

#### § A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.3.3 If funds appropriated by the Legislature of the State of Arizona to the Owner to perform the Work become unavailable for payment under this Contract, the Owner may delay construction for a period up to six months, after which date if no appropriated funds are made available by the Legislature, this Contract shall terminate at the option of the Owner. In the event of such delay or termination the Owner shall pay the Contractor under the Contract through the date of Work stoppage but only direct costs may be recovered by the Contractor for damages reasonably incurred after the date of Work stoppage.

#### § A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, substantiated in accordance with Section 7.2.2. ~~along with reasonable overhead and profit on the Work not executed.~~

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