



**The Bennett Group, Ltd.,
Master Agreement No. _____**

This **MASTER AGREEMENT** is made as of the _____ day of _____
in the year of _____, by and between the following parties:

DESIGN-BUILDER:

(Name and address)

The Bennett Group, Ltd.
1998 Springdale Road
Suite 101
Cherry Hill, NJ 08003

DESIGN-BUILD SUBCONTRACTOR:

(Name and address)

Only

In consideration of the mutual covenants and obligations contained herein, Design-Builder and Design-Build Subcontractor agree to enter into the following Master Agreement.

Article 1

General

1.1 Basic Purpose

1.1.1 This is a Master Agreement between Design-Builder and Design-Build Subcontractor for the purpose of establishing the terms and conditions for the performance of work on multiple Projects. The parties will agree to a Scope of Work for each Project which shall identify the Project, the Owner, the Contract Documents and the commercial terms relevant to each Project. Design-Build Subcontractor shall not perform Work on any Project without a written Scope of Work signed by a person authorized to do so by Design-Builder.

1.1.2 For each Project, Design-Builder will contract with Owner to provide the services necessary for the design and construction of the Project as set forth in the Design-Build Agreement between the Design-Builder and the Owner. Design-Build Subcontractor, through itself, Design Consultants and Sub-Subcontractors, agrees to provide all design, construction and other aspects of

the Work for each Project consistent with the Contract Documents for that Project.

1.1.3 Nothing in this Master Agreement shall require Design-Builder to enter into any Scope of Work with Design-Build Subcontractor. This Master Agreement does not guarantee any minimum amount of work for Design Build Subcontractor.

1.2 Basic Definitions

1.2.1 Terms used in this Master Agreement shall have the meanings set forth below:

.1 *Agreement or Master Agreement* refers to this executed contract between Design-Builder and Design-Build Subcontractor.

.2 *Construction Documents* refer to the final design documents, setting forth in detail drawings and specifications describing the requirements for construction of a Project.

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

.4 *Design-Build Agreement* refers to the contract between Design-Builder and Owner for the design and construction of a Project, and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Build Subcontractor, but is retained by Design-Build Subcontractor, or employed or retained by anyone under contract with Design-Build Subcontractor, to furnish design services required under the Contract Documents.

.6 *Designer* is a qualified, licensed design professional who is an employee of Design-Builder, retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Design-Build Agreement.

.7 *Final Completion* occurs when Design-Build Subcontractor's Work pursuant to a Scope of Work is finally complete, including but not limited to the completion of all Punch List work, the successful testing and/or commissioning of all materials installed and/or equipment provided by Design-Build Subcontractor, and Design Build Subcontractor's providing the documentation required pursuant to Section 7.5.1.

.8 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

.9 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Parties, the Project or Site, the practices involved in the Project or Site, or any Work. Legal Requirements include, but are not limited to, laws, codes, ordinances, rules, regulations, orders and decrees relating to the environment, employment, including but not limited to laws relating to harassment and discrimination, and safety on the jobsite.

.10 *Owner's Project Criteria* is the information developed by or for Owner to describe Owner's program, requirements and objectives for a

specific Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of a Design-Build Agreement. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.11 *Project* refers to a project described in a Design-Build Agreement between Design-Builder and an Owner.

.12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Design-Builder's obligations to Owner.

.13 *Punch List* refers to the list generated by Design Builder at Design-Build Subcontractor's notification of Substantial Completion wherein Design Builder indicates the items remaining to complete Design-Build Subcontractor's Work.

.14 *Scope of Work* is a written document issued by Design-Builder and accepted by Design-Build Subcontractor that establishes the Work to be performed on a Project.

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

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

.17 *Substantial Completion* is the point at which Design-Build Subcontractor's Work is sufficiently complete such that the only items remaining are Punch List activities.

.18 *Work* is comprised of all Design-Build Subcontractor's design, construction and other services required by the Contract Documents for a Project, including procuring and furnishing all supervision, labor, inspection, testing, start-up, materials, tools, equipment, machinery, transportation, temporary utilities, temporary facilities and all other items and services reasonably

inferable from this Master Agreement, a Scope of Work and the other Contract Documents necessary to compete the portion of the Project described in the Scope of Work associated with that Project.

1.3 Contract Documents

1.3.1 The Contract Documents for a Project will be comprised of the following:

.1 All written modifications, amendments and change orders to a Scope of Work;

.2 The Scope of Work for a Project;

.3 This Master Agreement, including all exhibits, attachments and Amendments, executed by Design-Builder and Design-Build Subcontractor;

.4 The Construction Documents as set forth in a Scope of Work;

.5 The Design-Build Agreement as referenced in a Scope of Work; and

.6 The following other documents, if any: *(Identify, for example, Unit Price Schedules, Design-Build Subcontractor's allowances and any other documents Design-Builder and Design-Build Subcontractor elect to make a Contract Document)*

Exhibit A: Example Scope of Work

Exhibit B: Insurance Requirements

1.4 Interpretation and Intent

1.4.1 The Contract Documents for a Project are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 1.3 hereof.

1.5 Mutual Obligations and Acknowledgments

1.5.1 Design-Builder and Design-Build Subcontractor commit at all times to cooperate fully

with each other, and proceed on the basis of trust and good faith. Design-Builder and Design-Build Subcontractor shall perform their respective responsibilities, obligations and services in a timely manner to facilitate the other's timely and efficient performance and so as not to delay or interfere with the other's performance of its obligations under this Master Agreement or the Contract Documents for a specific Project.

1.5.2 Prior to establishing the Contract Price for a Scope of Work, Design-Build Subcontractor shall fully familiarize itself with those portions of the Contract Documents and Design-Build Agreement provided by Design-Builder, as well as all documents incorporated therein and attached thereto.

1.5.3 Design-Builder and Design-Build Subcontractor acknowledge that the design services performed by Design-Build Subcontractor hereunder will relate to a part of the overall design of the Project and the importance of having Design-Build Subcontractor's design integrated into the Project's overall design concept. The parties commit to working with each other, and with Designer (if not otherwise employed by Design-Builder), to facilitate the coordination and integration of Design-Build Subcontractor's design services and Work Product with the overall design concept and Construction Documents. Design-Build Subcontractor agrees to provide information to Design Builder in a timely fashion and in the form and manner as reasonably required by Design Builder.

1.6 Entire Agreement

1.6.1 This Master Agreement, the Scopes of Work entered into by the Parties and the documents referenced therein, form the entire agreement between Design-Builder and Design-Build Subcontractor and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 2

Design-Build Subcontractor's Services and Responsibilities

2.1 General

2.1.1 After execution of each Scope of Work, Design-Builder and Design-Build Subcontractor will meet to discuss issues affecting the administration and schedule of the Work for Project, and implement the necessary procedures, including but not limited to those relating to design submissions, schedule updates, submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Scope of Work.

2.1.2 Design-Build Subcontractor agrees that the primary personnel assigned to perform the Services for the Scope of Work shall be as listed in Exhibit C to the Scope of Work. Design-Build Subcontractor shall not change such personnel without Design-Builder's prior approval. Design-Build Subcontractor's Representative shall be reasonably available to Design-Builder and shall have the necessary expertise and experience required to supervise the Work. Design-Build Subcontractor's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Design-Build Subcontractor. Design-Build Subcontractor shall replace its Representative upon the reasonable request of Design-Builder.

2.1.3 Design-Build Subcontractor shall only communicate with Owner, Designer (if not otherwise employed by Design-Builder), or separate contractors of Design-Builder or Owner through Design-Builder.

2.2 Review of Site and Contract Documents

2.2.1 Design-Build Subcontractor shall examine the Site and the Contract Documents prior to executing each Scope of Work so as to reasonably ascertain the nature of the Work associated therewith and the various conditions affecting the Work. By entering into the Scope of Work, Design-Build Subcontractor represents that the Contract Price and the Time for Completion set forth therein are sufficient to fully compensate Design-Build Subcontractor, absent any Changes as allowed

pursuant to the Contract Documents applicable to the Scope of Work.

2.2.2 Design-Build Subcontractor shall promptly report to Design-Builder any errors, inconsistencies, omissions, or violations of Legal Requirements Design-Build Subcontractor discovers. Design-Build Subcontractor shall be liable to Design-Builder for any damages resulting from any such errors, inconsistencies, omissions, or violations of Legal Requirements which Design-Build Subcontractor discovers and fails to report to Design-Builder.

2.3 Design and Pre-Construction Services

2.3.1 Design-Build Subcontractor shall, consistent with applicable state licensing laws, provide the architectural, engineering and other design professional services required to perform the Work for each Project through qualified, licensed design professionals who are either (i) employed by Design-Build Subcontractor or (ii) procured by Design-Build Subcontractor from qualified, licensed Design Consultants.

2.3.2 Design-Build Subcontractor shall not engage the services of any Design Consultant without first obtaining the written approval of Design-Builder, which approval shall not be unreasonably withheld. Design-Build Subcontractor agrees that each Design Consultant shall be fully bound to Design-Build Subcontractor in the same manner as Design-Build Subcontractor is bound to Design-Builder for all the requirements of the Contract Documents which are applicable to the Design Consultant's scope of services. Design-Build Subcontractor shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Design-Build Subcontractor's obligations under the Contract Documents.

Nothing in this Agreement shall relieve Design-Build Subcontractor from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Design-Builder and any Design Consultant.

2.3.3 The standard of care for all design professional services performed by Design-Build Subcontractor and its Design Consultants pursuant to this Master Agreement shall be the care and skill

ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if a Design-Build Agreement or Scope of Work, including but not limited to the Owner's Project Criteria, contains specifically identified performance standards for aspects of the Services (which shall be set forth in an exhibit to the Design-Build Agreement entitled "Performance Standard Requirements"), Design-Build Subcontractor agrees that all Services shall be performed to achieve such standards.

2.3.4 Design-Build Subcontractor shall assist Design-Builder regarding the selection of building systems, materials, and equipment, as well as cost, schedule, and construction feasibility assistance, for the Work. Such assistance shall include providing advice relative to, among other things, labor availability, construction costs, procurement strategies (including scheduling the procurement of items with long-lead times) related to the requirements set forth in the Contract Documents for the Work.

2.3.5 In accordance with the times set forth in the Project Schedule, Design-Build Subcontractor shall submit to Design-Builder all interim design submissions and revisions for the Work as required by the Scope of Work, and the Design-Builder. Such design submissions shall be in the form and quantity required by Design-Builder and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. The submissions shall also show the relationship of the Work to the overall Project design. Design-Builder and Design-Build Subcontractor agree that prior to the scheduled date for submitting all design submissions to Owner, Design-Builder, Design-Build Subcontractor and Designer (if not otherwise employed by Design-Builder) will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Design-Builder's budget and pricing assumptions.

2.3.6 In accordance with the Scope of Work, the Contract Documents and with the times set forth in the Project Schedule, Design-Build Subcontractor shall submit to Design-Builder Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work, and showing the relationship of the Work to the overall Project.

Design-Build Subcontractor shall familiarize itself with those portions of the Design-Build Agreement provided by Design-Builder. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. Design-Build Subcontractor shall provide the Construction Documents in the form and quantity called for in the Contract Documents or as required by Design-Builder. Design-Build Subcontractor shall perform agreed upon revisions and submit revised Construction Documents to Design-Builder for Design-Builder's and Owner's approval.

2.3.7 Design-Build Subcontractor shall attend and participate in such meetings as are held between and among Owner, Design-Builder and Designer (if not otherwise employed by Design-Builder) to discuss interim design submissions and the Construction Documents for the Work. With each submission, Design-Build Subcontractor shall identify during such meetings, among other things, the evolution of the design and any changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. To the extent that Design-Build Subcontractor's failure to identify such changes causes Design-Builder to incur additional uncompensated costs, Design-Build Subcontractor shall be responsible for such costs. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Design-Build Subcontractor shall review such minutes and provide notice of any objections thereto. Design-Build Subcontractor's failure to timely object to the meeting minutes shall constitute agreement to such minutes. In addition to the meeting minutes, the parties shall document Changes to the Contract Documents in a Changes Log. Either party may propose an addition to the Changes Log. The Changes Log shall describe the Change, provide a proposed price for the Change and shall indicate whether the parties agree or disagree as to the Change. When the parties agree on the price and time implication of any Change, the parties shall document such Change as a Change Order. Design-Build Subcontractor shall not perform Work that it claims is Changed Work without written a directive from Design-Builder.

2.3.8 In addition to the interim design submissions and Construction Documents, if requested by Design-Builder, Design-Build Subcontractor shall prepare interim design

submissions and Construction Documents for the Work required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.3.9 Design-Builder's and Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents for the Work compatible with the requirements of the Contract Documents. The review and/or approval by either Design-Builder or Owner of any interim design submission or the Construction Documents shall not be deemed to transfer any design liability from Design-Build Subcontractor to Design-Builder or Owner.

2.3.10 Design-Build Subcontractor will, at its own cost, revise any interim design submission or Construction Document it has provided to correct any errors, mistakes or omissions. In addition, if absent any changes to the Contract Documents, the design submission from Design-Build Subcontractor results in an increased construction cost, as determined by Design Builder, Design Build Subcontractor will, at its own cost, revise any such design submission so as not to increase the construction cost. Such revisions shall be performed timely and so as not to jeopardize the Project Schedule.

2.4 Construction Services Generally

2.4.1 Design-Build Subcontractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Scope of Work, the Contract Documents and the Project Schedule.

2.4.2 At the request of Design-Builder, Design-Build Subcontractor shall attend meetings with Design-Builder, Owner, and/or separate design professionals or contractors of Design-Builder or Owner to discuss design and/or construction issues which may arise during the Project.

2.5 Submittals and Substitutions

2.5.1 In accordance with the Contract Documents and the Project Schedule, Design-Build Subcontractor shall submit for Design-Builder's review and approval submittals, including shop drawings, product data and samples. Design-

Builder shall advise Design-Build Subcontractor on or before the meeting required by Section 2.1.1 hereof of the submittal requirements for the Project. Any variances with the Construction Documents shall be specifically identified in Design-Build Subcontractor's submittals. Design-Builder's review and approval shall not relieve Design-Build Subcontractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to Design-Build Subcontractor's submittals. Design-Build Subcontractor shall make any necessary revisions to the submittals requested by Design-Builder.

2.5.2 Design-Build Subcontractor shall not make any substitutions in the Work or procedures or methods specified by Owner, Design-Builder or the Construction Documents for performing the Work unless it first receives written approval for such substitution from Design-Builder.

2.6 Sub-Subcontractors

2.6.1 Design-Build Subcontractor shall employ only Sub-Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Build Subcontractor agrees that each Sub-Subcontractor shall be fully bound to Design-Build Subcontractor in the same manner as Design-Build Subcontractor is bound to Design-Builder for all the requirements of the Contract Documents to the extent applicable to the Sub-Subcontractor's scope of work. Design-Build Subcontractor shall provide to Design Builder a copy of any Sub-Subcontract. Design-Build Subcontractor shall obtain written approval from Design-Builder for each Sub-Subcontractor and shall not subcontract with any Sub-Subcontractor to which Design-Builder has a reasonable objection.

2.6.2 Design-Build Subcontractor assumes responsibility to Design-Builder for the proper performance of the Work of Sub-Subcontractors and any acts and omissions in connection with such performance. Design-Build Subcontractor shall coordinate the activities of all Sub-Subcontractors. Nothing in this Agreement is intended or deemed to relieve Design-Build Subcontractor from responsibility for the work performed by its Sub-Subcontractors, or create any legal or contractual relationship between Owner or Design-Builder and

any Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7 Work of Others

2.7.1 Design-Build Subcontractor agrees to reasonably cooperate with, and coordinate its activities so as not to interfere with, those parties performing work at the Site, including Owner's and Design-Builder's separate contractors, so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Design-Build Subcontractor shall be responsible for any increased costs incurred by Design Builder or Owner as a result of Design-Build Subcontractor's interference to the work of Owner's and Design Builder's separate contractors.

2.7.2 If any part of the Work depends upon other work performed by Design-Builder, or Design-Builder's or Owner's separate contractors, Design-Build Subcontractor shall, prior to proceeding with that part of the Work, inspect such other work and promptly notify Design-Builder of any discovered discrepancies or defects that would render it unacceptable for the proper performance of the Work. Design-Build Subcontractor shall not proceed with such part of the Work without further direction from Design-Builder. Design-Builder shall promptly correct or cause to be corrected any such discrepancy or defect in the other work. Except to the extent such discrepancies or defects in such other work are latent, Design-Build Subcontractor shall be liable for appropriate losses or damages incurred due to any discrepancies or defects in such other work not reported to Design-Builder by Design-Build Subcontractor.

2.8 Site Cleanup

2.8.1 Design-Build Subcontractor shall keep the Site reasonably free from debris, trash and construction wastes resulting from the performance of the Work. Upon Substantial Completion of the Work, or a portion of the Work, Design-Build Subcontractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.9 Inspection

2.9.1 At all reasonable times, Design-Build Subcontractor shall provide sufficient facilities for inspection of the Work by Design-Builder at the Site and at all locations where portions of the Work are in progress or various stages of completion. When appropriate portions of the Work are ready for inspection, Design-Build Subcontractor shall notify Design-Builder.

2.10 Patents and Copyrights

2.10.1 Design-Build Subcontractor shall pay all license fees and royalties due for items, materials, methods, systems or processes applicable to the Work which are subject to copyrights or patent rights and which are selected by Design-Build Subcontractor.

2.11 Legal Requirements

2.11.1 Design-Build Subcontractor shall perform the Work in accordance with all applicable Legal Requirements.

2.11.2 Design-Build Subcontractor shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are the responsibility of Owner or Design-Builder and related to the Work.

2.11.2 Design-Build Subcontractor shall in a timely fashion make any revisions to the Construction Documents necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements.

2.12 Project Safety

2.12.1 Design-Build Subcontractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, (iii) the work of others on the Project, and (iv) all other property at the Site or adjacent thereto. Design-Build Subcontractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

2.12.2 Design-Build Subcontractor is fully responsible for the safety of its Work, including but not limited to the safety of all employees of Design-Build Subcontractor and Sub-Subcontractors. Design-Build Subcontractor shall provide all safety equipment and training required pursuant to all Legal Requirements related to safety and shall have a representative attend all safety meetings called by Design Builder. Design-Build Subcontractor shall provide to Design Builder its own Safety Plan, which shall include a description of the applicable Legal Requirements and Design-Build Subcontractor's plan to meet such requirements. Design-Build Subcontractor's failure to adhere to the Legal Requirements or Design Builder's safety plan shall be a material breach of this Agreement, and Design-Build Subcontractor shall indemnify, defend and hold Design-Builder harmless from any claims resulting from any such failure by Design-Build Subcontractor.

2.13 Warranty

2.13.1 Design-Build Subcontractor warrants to Design-Builder that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Build Subcontractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty or warranty required by the Contract Documents which provides Owner and/or Design-Builder with greater warranty rights than set forth in this Section 2.13 or the Contract Documents. Design-Build Subcontractor will provide and, if requested, assign to Design-Builder all manufacturers' warranties upon Substantial Completion.

2.14 Correction of Defective Work

2.14.1 Design-Build Subcontractor agrees to correct any Work that is found not to be in conformance with the Contract Documents within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.14.2 Design-Build Subcontractor shall, within three (3) days of receipt of written notice from Design-Builder that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work or the Project affected by the nonconforming Work. If Design-Build Subcontractor fails to commence the necessary steps within such three (3) day period, Design-Builder, in addition to any other remedies provided under the Contract Documents, may provide Design-Build Subcontractor with written notice that Design-Builder will commence correction of such nonconforming Work with its own forces. If Design-Builder does perform such corrective Work, Design-Build Subcontractor shall be responsible for all reasonable costs incurred by Design-Builder in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the three (3) day periods identified herein shall be deemed inapplicable.

2.14.3 The one year period referenced in this Section 2.14 applies only to Design-Build Subcontractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Design-Builder may have regarding Design-Build Subcontractor's obligations under the Contract Documents.

2.15 Start-Up and Training

2.15.1 If required as part of Design-Build Subcontractor's Work, Design-Build Subcontractor shall be responsible for the start-up, testing, and commissioning of the Work, and shall train Owner's personnel with respect to the operation and maintenance of the Work.

2.16 Hazardous Conditions

2.16.1 Design-Build Subcontractor is responsible for Hazardous Conditions introduced to the Site by itself, Sub-Subcontractors or anyone for whose acts they may be liable. Design-Build Subcontractor shall indemnify, defend and hold harmless Owner, Design-Builder and their officers, directors, employees and agents from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or

resulting from those Hazardous Conditions introduced to the Site by Design-Build Subcontractor, Sub-Subcontractors or anyone for whose acts they may be liable. If Design-Build Subcontractor creates any hazardous condition on the site, Design-Build Subcontractor shall immediately correct or remove such hazardous condition, at Design-Build Subcontractor's sole cost and expense, so that the hazardous condition no longer exists. If, after notice from Design-Builder, the condition is not immediately corrected or removed, Design-Builder may correct or remove such condition and charge the cost to do so back to Design-Build Subcontractor.

2.17 Miscellaneous

2.17.1 The design and construction services by Design-Build Subcontractor shall be performed by people with the requisite skill and experience to perform the Work, and Design-Build Subcontractor shall provide sufficient manpower so as to perform the Work within the Project Schedule. If, in Design Builder's opinion, Design-Build Subcontractor is not providing sufficient manpower to complete the Work within the Project Schedule, Design Builder shall provide written notification to Design-Build Subcontractor of such failure. If Design-Build Subcontractor does not remedy the failure within three (3) days, Design Builder shall provide such manpower and shall backcharge the cost to Design-Build Subcontractor.

2.17.2 If Design Builder has a reasonable objection to any person or Sub-Subcontractor performing the Work, Design-Build Subcontractor shall replace such person at no cost to Design Builder. Design-Build Subcontractor shall comply with all rules and requirements established by Design Builder with respect to labor relations or cooperation among Design Builder's separate contractors. Failure to do so shall be a material breach of this Agreement.

Article 3

Design-Builder's Services and Responsibilities

3.1 Timely Reviews and Approvals

3.1.1 Design-Builder shall provide timely reviews and approvals of all interim design submissions, Construction Documents and submittals, consistent with the turnaround times set forth in the Project Schedule, or as agreed to by the parties at the meeting required under Section 2.1.1 hereof.

3.2 Design-Builder's Representative

3.2.1 Design-Builder's Representative shall be responsible for providing Design-Builder-supplied information and approvals in a timely manner to permit Design-Build Subcontractor to fulfill its obligations under the Contract Documents.

3.3 Furnishing of Services and Information

3.3.1 Unless expressly stated to the contrary in a Scope of Work or the Contract Documents, and to the extent Design-Builder has received such items from Owner, Design-Builder shall provide for Design-Build Subcontractor's information the items listed below. Design-Builder does not warrant the accuracy or completeness of such items provided, however, that Design-Build Subcontractor is entitled to rely on these items to the same extent Design-Builder is entitled to rely upon such items in the Design-Build Agreement:

.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Design-Build Subcontractor to perform the Work;

- .4 A legal description of the Site;
- .5 As-built and record drawings of any existing structures at the Site;
- .6 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- .7 Owner's Project Criteria;
- .8 All permits, approvals, and licenses set forth in the Owner's Permit List attached as an exhibit to the Design-Build Agreement; and
- .9 Test and inspection reports.

3.3.2 Design-Builder shall provide Design-Build Subcontractor with the Project Schedule and appropriate updates thereto.

3.3.3 Design-Builder shall, upon request of Design-Build Subcontractor, provide Design-Build Subcontractor with interim design documents and Construction Documents for portions of the Project that are not being designed by Design-Build Subcontractor.

3.4 Notification of Errors

3.4.1 Design-Builder shall notify Design-Build Subcontractor of any errors, inconsistencies, or omissions Design-Builder discovers in the Work. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve Design-Build Subcontractor of responsibility for errors, inconsistencies, or omissions in the Work.

3.5 Attendance at Design Meetings

3.5.1 Design-Builder shall, as Design-Builder deems appropriate, afford Design-Build Subcontractor and its Sub-Subcontractors the opportunity to attend all necessary design meetings with Owner, Designer or others furnishing portions of the design for the Project. Design-Build Subcontractor shall attend those meetings when requested by Design-Builder

3.6 Review and Approval of Submittals

3.6.1 Design-Builder shall review and approve submittals, including shop drawings, product data and samples, submitted by Design-Build Subcontractor. Design-Builder's review and approval of submittals shall be only for the purpose of confirming general conformance with the Construction Documents. Design-Builder's review and approval shall not relieve Design-Build Subcontractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to Design-Build Subcontractor's submittals. If revisions are necessary to a submittal prior to Design-Builder's approval, Design-Builder shall inform Design-Build Subcontractor of any such necessary revisions.

3.7 Design-Builder's Separate Contractors

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

Article 4

Ownership of Work Product

4.1 Work Product

4.1.1 All drawings, specifications and other documents and electronic data furnished by Design-Build Subcontractor to Design-Builder under this Agreement ("Work Product") are deemed to be instruments of service and Design-Build Subcontractor shall retain ownership and property interests therein provided, however, that Design-Build Subcontractor hereby grants Design-Builder, upon Design-Builder's payment to Design-Build Subcontractor of amounts properly due under this Agreement, a limited license to use the Work Product in connection with completing this Project. Notwithstanding the above, if the Design-Build Agreement grants greater ownership and property rights to the Owner, then Design-Build

Subcontractor grants such greater rights to Design-Builder.

4.2 Agreement to Grant Limited License to Owner

4.2.1 Design-Build Subcontractor has reviewed those portions of the Design-Build Agreement provided by Design-Builder and is fully aware of the ownership and property rights to use the Work Product which are granted to Owner therein. Design-Build Subcontractor accepts and agrees to Owner's ownership and property rights with respect to the Work Product contained in the Design-Build Agreement.

4.3 Indemnification for Use of Work Product

4.3.1 If either Design-Builder or Design-Build Subcontractor uses the Work Product on any other project without the involvement of the other party, such party agrees that it shall do so at its sole risk and without liability or legal exposure to the other party, Owner, or anyone working through them. Such party further agrees that it shall defend, indemnify and hold harmless the other party and Owner from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from such use of the Work Product on another project.

4.4 Confidential and/or Proprietary Information

4.4.1 The information received by Design-Build Subcontractor from Design-Builder in connection with a Project is confidential and/or proprietary to either Design Builder or to Owner. Design-Build Subcontractor agrees to maintain the confidential nature of such information and to execute any such additional agreements as may be required by Owner or Design-Builder with respect to maintaining the confidentiality of such information.

Article 5

Time of Performance

5.1 Date of Commencement

5.1.1 The Work shall commence after Design-Build Subcontractor's receipt of Design-Builder's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Time of Completion

5.2.1 Design-Build Subcontractor shall achieve Substantial Completion of the Work pursuant to the Project Schedule ("Project Schedule"). Design-Build Subcontractor shall diligently and continuously prosecute and complete the Work in accordance with the Project Schedule as it may be revised and issued from time to time during the performance of the Work, and any other scheduling requirements listed in the Contract Documents.

5.2.2 Design-Build Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work. Design-Build Subcontractor shall provide Design-Builder information for the scheduling of the times and sequence of operations required for the Work to meet Design-Builder's overall schedule requirements, shall continuously monitor the Project Schedule, including any revisions thereto, so as to be fully familiar with the timing, phasing and sequence of operation of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the Project Schedule including any revisions thereto.

5.2.3 Design-Build Subcontractor shall timely perform the various stages of the Work so that Design-Builder can achieve the dates set forth in the Project Schedule, including any revisions thereto. If Design-Build Subcontractor fails to perform its work in a timely fashion or if Design-Builder has a reasonable belief that Design-Build Subcontractor cannot complete the Work within the Project Schedule, Design-Builder may, after three (3) days' notice and an opportunity to cure, provide such additional forces as it deems necessary and charge the cost of such forces back to Design-Build Subcontractor.

5.2.4 Design-Build Subcontractor shall achieve Final Completion within ten (10) days of the date of Substantial Completion. If Design-Build Subcontractor fails to achieve Final Completion within this ten (10) day time frame, Design-Builder has the option to immediately terminate this Agreement for cause, complete the Work with such forces as Design-Builder reasonably determines is necessary and charge the cost back to Design-Build Subcontractor.

5.3 Time is of the Essence

5.3.1 Design-Builder and Design-Build Subcontractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents and the Project Schedule.

5.4 Delays to the Work

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

5.4.2 In addition to Design-Build Subcontractor's right to a time extension for those events set forth in Section 5.4.1 above, Design-Build Subcontractor shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 5.4.1 above that are beyond the control of Design-Build Subcontractor, Owner and Design-Builder, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

5.4.3 Notwithstanding any other provision to the contrary, any delay and resulting damages that arise out of, or relate to, problems caused by Owner or for which Owner is responsible shall be resolved pursuant to Article 13 hereof.

5.4.4 If the Project is delayed due, in whole or in part, to the Design-Build Subcontractor or anyone for whom Design-Build Subcontractor is responsible Design-Build Subcontractor shall compensate Design-Builder for its costs, damages and expenses arising from such delay and shall indemnify, defend and hold Design-Builder harmless from all claims arising from such delay, including but not limited to any liquidated damages or other damages that Owner may assess against Design-Builder which are attributable to Design-Build Subcontractor or anyone for whom Design-Build Subcontractor is responsible. In addition, Design-Build Subcontractor shall, at the direction of Design-Builder and at Design-Build Subcontractor's own cost and expense, work such overtime and take such other measures as may be necessary to make up for all time lost in the completion of the project due to such delay. Design-Builder may, in addition to any other remedies that it may have, complete Design-Build Subcontractor's Work with such forces as it deems necessary to maintain the Project Schedule.

Article 6

Contract Price

6.1 Contract Price

6.1.1 The Contract Price shall be set forth in the Scope of Work for each Project.

and shall be subject to adjustments made in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. Design-Builder is not responsible for Design-Build Subcontractor's bidding or estimating mistakes or miscalculation of market conditions. The Contract Price shall not change without a written Change Order signed by a representative authorized by Design Builder to agree to Change Orders.

Article 7

Procedure for Payment

7.1 Schedule of Values

7.1.1 Within the time specified by Design Builder and for each Scope of Work, Design-Build Subcontractor shall submit for Design-Builder's review and approval a schedule of values for all of the Work described in the Scope of Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Build Subcontractor throughout the Work.

7.2 Progress Payments

7.2.1 Beginning with the first month after the Date of Commencement, Design-Build Subcontractor shall submit on the twenty fifth (25th) day of each month for Design-Builder's review and approval, Design-Build Subcontractor's Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be in a form acceptable to Design-Builder and accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.1 hereof. Design-Builder will submit Design-Build Subcontractor's proper Application for Payment to Owner with Design-Builder's application.

7.2.2 The Application for Payment may not request payment for equipment and materials not yet incorporated into the Project unless Design-Build Subcontractor obtains Design-Builder's prior written approval and (i) Design-Builder is satisfied that the equipment and materials are suitably stored at either the Site or another location acceptable to Design-Builder, (ii) the equipment and materials are protected by suitable insurance, and (iii) upon payment, Design-Builder will receive the equipment and materials free and clear of all liens and encumbrances.

7.2.3 The Application for Payment shall constitute Design-Build Subcontractor's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to

Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Build Subcontractor's receipt of payment, whichever occurs earlier.

7.2.4 Design-Builder shall make payment on Design-Build Subcontractor's properly submitted and accurate Application for Payment forty five (45) days after Design-Builder's receipt of payment from Owner on account of Design-Build Subcontractor's monthly Application for Payment or such sooner time as required by law, but in each case less the total of payments previously made, and less amounts properly withheld under this Agreement.

7.3 Retainage on Progress Payments

7.3.1 Design-Builder will retain from each of Design-Build Subcontractor's Application for Payment ten percent (10%). Unless mutually agreed otherwise between the parties, retainage will be included in Design-Builder's final payment to Design-Build Subcontractor, provided 1) Design-Build Subcontractor achieved Final Completion within ten (10) days of the date of Substantial Completion; 2) Design-Builder has received such retained amounts from Owner and 3) Design Builder has received all documentation required pursuant to Section 7.5.2.

7.4 Withholding of Payments

7.4.1 If Design-Builder determines that Design-Build Subcontractor is not entitled to all or part of an Application for Payment, it will notify Design-Build Subcontractor in writing. The notice shall indicate the specific amounts Design-Builder intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Build Subcontractor must take to rectify Design-Builder's concerns. In addition to any other reason allowed pursuant to this Agreement, Design Builder may withhold payments for the following reasons:

- .1 Material breach of this Agreement;
- .2 Defective Work or Work not in compliance with the Contract Documents;
- .3 Design Builder's reasonable assessment that the Work cannot be completed within the Project Schedule or for the Contract Price;

.4 Third party claims filed or reasonable evidence that such claims will be filed;

.5 Failure of Design-Build Subcontractor to pay lower tier subcontractors, suppliers and/or employees;

.6 Failure of Design-Build Subcontractor to achieve Final Completion within ten (10) days of Substantial Completion; or

.7 Violation of any Legal Requirements

Design-Builder and Design-Build Subcontractor will attempt to resolve Design-Builder's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder shall pay Design-Build Subcontractor the uncontested amount of the Application for Payment, and Design-Build Subcontractor may pursue its rights under the Contract Documents, including those under Article 13 hereof.

7.5 Final Payment

7.5.1 Design-Build Subcontractor shall submit its Final Application for Payment to Design-Builder in accordance with Section 7.5.2 below. Design-Builder shall make payment on Design-Build Subcontractor's properly submitted and accurate Final Application for Payment within ten (10) days after Design-Builder's receipt of final payment from Owner on account of Design-Build Subcontractor's properly submitted Final Application for Payment, provided also that Design-Build Subcontractor has satisfied the requirements for final payment set forth in Section 7.5.2 below and no reasons for withholding exist.

7.5.2 At the time of submission of its Final Application for Payment, Design-Build Subcontractor shall provide the following information:

.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Design-Builder's or Owner's interests;

.2 a general release executed by Design-Build Subcontractor waiving, upon receipt of final payment by Design-Build Subcontractor, all claims, except those claims previously made in writing to Design-Builder and remaining unsettled at the time of final payment;

.3 consent of Design-Build Subcontractor's surety, if any, to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents; and

.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

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

7.5.4 Upon accepting final payment, Design-Build Subcontractor waives all claims against Design Builder except those previously made in writing and identified as unsettled at the time of the Final Application for Payment.

7.6 Payment Not Acceptance

7.6.1 No payment to Design-Build Subcontractor under this Agreement shall be evidence of, or construed to be, acceptance of defective, faulty, improper or non-conforming work.

7.7 Design-Build Subcontractor's Payment Obligations

7.7.1 Design-Build Subcontractor will pay Design Consultants, Sub-Subcontractors, Suppliers and employees, in accordance with its contractual obligations to such parties, all the amounts Design-Build Subcontractor has received from Design-Builder on account of their work. Design-Build

Subcontractor will impose similar requirements on Design Consultants and Sub-Subcontractors to pay those parties with whom they have contracted. Design-Build Subcontractor will indemnify, defend and hold Owner and Design-Builder harmless against any claims for payment and mechanic's liens as set forth in Section 11.3 hereof.

7.8 Record Keeping and Finance Controls

7.8.1 With respect to changes in the Work performed on a cost basis by Design-Build Subcontractor pursuant to the Contract Documents, Design-Build Subcontractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after final payment of the Work, Design-Builder and Design-Builder's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Build Subcontractor's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Build Subcontractor shall preserve for a period of three (3) years after final payment.

Article 8

Stop Work and Termination

8.1 Design-Builder's Right To Stop Work

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

8.1.2 Design-Build Subcontractor is entitled to seek an adjustment of the Contract Price and/or times for completion of the Work if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Design-Builder. Notwithstanding anything to the contrary herein, if Design-Builder's suspension of the Work is

the result of Owners suspension of the Design-Builder's work under the Design-Build Agreement, then Design-Builder shall pay Design-Build Subcontractor only those amounts Design-Builder actually receives from Owner on account of the Work.

8.2 Design-Builder's Right to Terminate for Convenience

8.2.1 Upon ten (10) days' written notice to Design-Build Subcontractor, Design-Builder may, for its convenience and without cause, elect to terminate either this Master Agreement or a specific Scope of Work. In the event that a Scope of Work is terminated, Design-Builder shall have the right to use the existing Work Product for that Scope of Work for purposes of completing the Project, and shall pay Design-Build Subcontractor for the following:

- .1** All Work executed and for proven loss, cost or expense in connection with the Scope of Work;
- .2** The reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Design Consultants and Sub-Subcontractors; and
- .3** The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

8.2.2 If Design-Builder's termination of Design-Build Subcontractor for convenience is the result of an Owner's termination of Design-Builder for convenience under a Design-Build Agreement, then Design-Builder shall pay Design-Build Subcontractor only those amounts Design-Builder actually receives from Owner on behalf of Design-Build Subcontractor.

8.3 Design-Builder's Right to Terminate for Cause

8.3.1 If Design-Build Subcontractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, its Sub-Subcontractors, Suppliers, employees or Design Consultants, (v) prosecute the Work with

promptness and diligence to ensure that the Work is completed in accordance with the Project Schedule, as such schedule may be adjusted, or (vi) perform material obligations under the Contract Documents, then Design-Builder shall have the rights, in addition to any other rights and remedies provided in the Contract Documents or by law, set forth in Sections 8.3.2 and 8.3.3 below. If Design-Build Subcontractor fails to achieve Final Completion pursuant to Section 5.2.4, Design Builder may immediately terminate the Master Agreement and/or any specific Scope of Work, and Design Builder shall have the rights set forth in Sections 5.2.4 and 8.3.3.

8.3.2 Upon the occurrence of an event set forth in Section 8.3.1 above, Design-Builder may provide written notice to Design-Build Subcontractor that it intends to terminate the Master Agreement and/or a Scope of Work unless the problem cited is cured, or commenced to be cured, within three (3) days of Design-Build Subcontractor's receipt of such notice. If Design-Build Subcontractor fails to cure, or reasonably commence to cure, such problem then Design-Builder may declare the Master Agreement and/or Scope of Work terminated for default by providing written notice to Design-Build Subcontractor of such declaration. Notwithstanding the above, Design-Builder may immediately terminate either the Master Agreement or an individual Scope of Work if Design-Build Subcontractor violates any Legal Requirements, including but not limited to any Legal Requirements related to Safety.

8.3.3 Upon declaring the Master Agreement and/or a Scope of Work terminated for cause, Design-Builder may enter upon the premises and take possession, for the purpose of completing any and all Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Build Subcontractor hereby transfers, assigns and sets over to Design-Builder for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. Design-Builder shall have the right to use the existing Work Product for purposes of completing the Project. In the event of such termination, Design-Build Subcontractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in

accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price associated with a Scope of Work exceeds the cost and expense incurred by Design-Builder in completing the Scope of Work, such excess shall be paid by Design-Builder to Design-Build Subcontractor. If Design-Builder's cost and expense of completing the Scope of Work exceeds the unpaid balance of the Contract Price for the Scope of Work, then Design-Build Subcontractor shall be obligated to pay the difference to Design-Builder. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by Design-Builder in connection with the procurement and defense of claims arising from Design-Build Subcontractor's default, subject to the waiver of consequential damages set forth in Section 13.4 hereof.

8.3.4 If Design-Builder improperly terminates the Master Agreement and/or a Scope of Work for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 8.2 of the Agreement.

8.4 Design-Build Subcontractor's Right To Stop Work

8.4.1 If, with respect to a Scope of Work, (i) Owner fails to pay amounts due Design-Builder under the Design-Build Agreement for Work performed by Design-Build Subcontractor, such failure is not due to the fault of Design-Build Subcontractor, and Design-Build Subcontractor has not been paid such amounts due, or (ii) Design-Builder fails to pay any amounts due Design-Build Subcontractor under this Agreement, Design-Build Subcontractor may, in addition to any other rights afforded under the Contract Documents or at law, stop work in accordance with Section 8.4.2.

8.4.2 Design-Build Subcontractor shall provide Design-Builder with written notice that Design-Build Subcontractor will stop work unless said failure to pay the amount is not cured within seven (7) days from Design-Builder's receipt of Design-Build Subcontractor's notice. If Design-Builder does not cure the problem within such seven (7) day period, Design-Build Subcontractor may stop work. In such case, Design-Build Subcontractor shall be entitled to make a claim for adjustment to the Contract Price and the times for completion of the Work to the extent it has been adversely impacted by such

stoppage. To the extent Design-Builder's failure to pay is related to a dispute between the parties, the dispute will be resolved in accordance with Article 13 and the parties will continue performance in accordance with Section 13.3.

8.5 Design-Build Subcontractor's Right to Terminate For Cause

8.5.1 Design-Build Subcontractor, in addition to any other rights and remedies afforded under the Contract Documents or at law, may terminate a Scope of Work for cause in accordance with Section 8.5.2 below if Design-Builder fails to cure the problems set forth in Section 8.4.1 above within thirty (30) days after Design-Build Subcontractor has stopped the work.

8.5.2 Upon the occurrence of the event set forth in Section 8.5.1 above, Design-Build Subcontractor may provide written notice to Design-Builder that it intends to terminate the Scope of Work unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Design-Build Subcontractor may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Build Subcontractor may declare the Scope of Work terminated for default by providing written notice to Design-Builder of such declaration. In such case, Design-Build Subcontractor shall be entitled to recover in the same manner as if Design-Builder had terminated the Scope of Work for its convenience under Section 8.2 of the Agreement.

8.6 Bankruptcy of Design-Builder or Design-Build Subcontractor

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

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

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 8.

8.6.2 The rights and remedies under Section 8.6.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

8.7 Effect of Termination of Master Agreement

8.7.1 If this Master Agreement is terminated, then each Scope of Work entered into pursuant to this Master Agreement is likewise terminated, except to the extent that the Scope of Work has been completed or that warranties, indemnification obligations, and terms and conditions of either the Master Agreement or a Scope of Work survive the termination.

Article 9

Representatives of the Parties

9.1 Design-Builder's Representatives

9.1.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for signing Change Orders and avoiding and resolving disputes under Article 13 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

9.1.2 Design-Builder shall designate in each Scope of Work an individual as its Design-Builder's Representative, which individual will have the authority and responsibility set forth in Section 3.2 of the Agreement:

9.2 Design-Build Subcontractor's Representatives

9.2.1 Design-Build Subcontractor designates the individual listed below as its Senior Representative ("Design-Build Subcontractor's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 13 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Build Subcontractor shall designate in each Scope of Work an individual as its Design-Build Subcontractor's Representative, which individual will have the authority and responsibility set forth in Section 2.1.2 of the Agreement:

Article 10

Insurance and Bonds

10.1 Design-Build Subcontractor's Insurance Requirements

10.1.1 Design-Build Subcontractor is responsible for procuring and maintaining, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in Exhibit B, with the minimum ratings set forth in Exhibit B, for certain claims which may arise from or out of the performance of

this Master Agreement and obligations under a Scope of Work or the Contract Documents associated therewith. Design-Build Subcontractor shall obtain such insurance at the time this Master Agreement is entered into and shall confirm that it has maintained such coverage prior to the performance of any Work under a Scope of Work. If a Scope of Work requires additional or different coverages, such additional requirements shall be set forth in the Scope of Work, and Design-Build Subcontractor shall obtain such insurance prior to starting work with respect to the Scope of Work.

10.1.2 Design-Build Subcontractor shall require its Design Consultants and Sub-Subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in Exhibit B prior to performing any work on a Scope of Work.

10.1.3 Design-Build Subcontractor's and its Design Consultants and Sub-Subcontractors' insurance coverage set forth in Exhibit B shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

10.1.4 To the extent Design-Builder requires Design-Build Subcontractor or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Build Subcontractor or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Exhibits attached pursuant to Sections 10.1.1 and 10.1.2 above. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

10.1.5 Prior to commencing any services under any Scope of Work, Design-Build Subcontractor shall provide Design-Builder with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Scope of Work and/or the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is

given to Design-Builder. Upon request by Design Builder, Design-Build Subcontractor shall provide a copy of any and all policies relating to insurance required under this Agreement and any claims history associated with such policy.

10.1.6 Except as otherwise stated in Exhibit B, the insurance policies required herein shall list Design-Builder, Owner, and any other entities required by the Scope of Work or the Contract Documents, if any, as an additional insured.

10.2 Property Insurance

10.2.1 In accordance with the Contract Documents and/or the Scope of Work, Owner or Design-Builder shall procure and maintain property insurance upon the entire Project.

10.3 Waiver of Subrogation

10.3.1 Design-Builder and Design-Build Subcontractor waive against each other and Owner, Sub-Subcontractors, Designer, Design Consultants, Owner's or Design-Builder's separate contractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Design-Build Subcontractor shall, where appropriate, require similar waivers of subrogation from Designer, Design Consultants and Sub-Subcontractors and separate contractors of Design-Builder, and shall require each of them to include similar waivers in their contracts.

Article 11

Indemnification

11.1 Patent and Copyright Infringement

11.1.1 Design-Build Subcontractor shall defend any action or proceeding brought against Owner or Design-Builder based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Design-Builder shall give prompt written notice to Design-Build Subcontractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense

of same. Design-Build Subcontractor shall indemnify, defend and hold harmless Owner and Design-Builder from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Build Subcontractor agrees to keep Design-Builder informed of all developments in the defense of such actions.

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

11.1.3 Sections 11.1.1 and 11.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating to a particular process or product of a particular manufacturer specified by Owner or Design-Builder or (ii) arising from modifications to the Work by Owner or Design-Builder after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Design-Builder shall defend, indemnify and hold harmless Design-Build Subcontractor to the same extent Design-Build Subcontractor is obligated to defend, indemnify and hold harmless Design-Builder in Section 11.1.1 above.

11.1.4 The obligations set forth in this Section 11.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

11.2 Tax Claim Indemnification

11.2.1 If, in accordance with Design-Builder's direction, an exemption for all or part of the Work is claimed for taxes, Design-Builder shall indemnify, defend and hold harmless Design-Build Subcontractor from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or

other expenses or costs incurred by Design-Build Subcontractor as a result of any action taken by Design-Build Subcontractor in accordance with Design-Builder's directive, but only to the extent that Owner provides to Design Builder defense and indemnification for a tax claim.

11.3 Payment Claim Indemnification

11.3.1 Providing that Design-Builder is not in breach of its contractual obligation to make payments to Design-Build Subcontractor for the Work, Design-Build Subcontractor shall indemnify, defend and hold harmless Owner and Design-Builder from any claims or mechanic's liens brought against Owner, Design-Builder, or against the Project as a result of the failure of Design-Build Subcontractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for, or in connection with the Work. Within three (3) days of receiving written notice from Design-Builder that such a claim or mechanic's lien has been filed, Design-Build Subcontractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Build Subcontractor fails to do so, Design-Builder will have the right to discharge the claim or lien and hold Design-Build Subcontractor liable for costs and expenses incurred, including attorneys' fees.

11.4 Design-Build Subcontractor's General Indemnification

11.4.1 Design-Build Subcontractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, Design-Builder, their officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction to real and personal property of any kind whatsoever, sustained by any person or persons, whether employees of the Design-Build Subcontractor or not, caused by, resulting from, arising out of or occurring in connection with the performance of the Work together with any Change Orders or additions to the work included in the Scope of Work. Design-Build Subcontractor agrees that the obligation to defend, indemnify and hold harmless as described above exists whether such injuries to persons or damage to property are due or

are claimed to be due to the negligence of Design Builder or the Owner or the agents, servants and employees thereof, excepting from the foregoing the sole and complete negligence of a party indemnified hereunder. The obligation to defend commences when a claim is made against Design Builder or Owner, even if Design-Build Subcontractor disputes its obligation to indemnify, defend and hold harmless. The defense shall be provided through counsel chosen by the Design Builder and/or the Owner. The Design-Build Subcontractor agrees to pay for the defense of the Design-Builder and/or Owner upon demand.

11.4.2 If an employee of Design-Build Subcontractor, Design Consultants, Sub-Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.4.1 above, Design-Build Subcontractor's indemnity obligation set forth in Section 11.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Build Subcontractor, Design Consultants, Sub-Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.5 Survival, Indemnification Provisions Specifically Negotiated.

11.5.1 The indemnification provisions of this Master Agreement shall survive the termination of the Master Agreement or any Scope of Work.

11.5.2 The indemnification provisions of this Agreement were specifically negotiated between the parties.

Article 12

Changes to the Contract Price and Time

12.1 Changes

12.1.1 Changes to the Work issued by Design-Builder shall be governed by the provisions set forth in the following sections of this Article 12. If Owner issues changes affecting the Work, Design-Build Subcontractor shall only be entitled to adjustments in its Contract Price and the times for completion of the Work attributable to such Owner-generated

changes to the extent Design-Builder actually receives such adjustments from Owner.

12.2 Change Orders

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

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the times for completion of the Work.

12.2.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Design-Builder and Design-Build Subcontractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Change Orders must be in writing and signed by an authorized representative of Design Builder.

12.3 Work Change Directives

12.3.1 A Work Change Directive is a written order prepared and signed by Design-Builder, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the times for completion of the Work.

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

12.4 Contract Price Adjustment

12.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by agreement between the parties and shall be based on the actual cost of the change of the Work including reasonable overhead and profit.

12.4.2 If Design-Builder and Design-Build Subcontractor disagree upon whether Design-Build Subcontractor is entitled to be paid for any services required by Design-Builder, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Design-Builder and Design-Build Subcontractor shall resolve the disagreement pursuant to Article 13 hereof.

12.5 Emergencies

12.5.1 In any emergency affecting the safety of persons and/or property, Design-Build Subcontractor shall act, at its discretion unless otherwise directed by the Design-Builder, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or times for completion of the Work on account of emergency work shall be determined as provided in this Article 12.

Article 13

Contract Adjustments and Disputes

13.1 Requests for Contract Adjustments and Relief

13.1.1 If either Design-Build Subcontractor or Design-Builder believes that it is entitled to relief against the other for any event arising out of or related to the Work or the Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall be in accordance with specific notice requirements contained in applicable sections of the Contract Documents and shall be made prior to incurring any cost or expense. Design-Build Subcontractor shall provide Design-Builder written notice of claims for which Owner may be responsible in sufficient time for Design-Builder to meet its notice requirements to Owner set forth in the Contract Documents. Design-Build Subcontractor shall review the documentation requirements in the Design Build Agreement and shall comply with such documentation requirements when submitting its claim to the Design Builder. In the absence of any specific notice requirement, Design Build Subcontractor shall provide written notice within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after Subcontractor reasonably should have recognized the event or condition giving rise to the request, whichever is later. Failure of Design Build Subcontractor to provide timely notice shall constitute a waiver of such claim, but only to

the extent that Design Builder is materially prejudiced as a result of the untimely notice.

13.2 Dispute Avoidance and Resolution

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

13.2.2 The parties will first attempt to resolve such claim, dispute or controversy at the field level through discussions between Design-Builder's Senior Representative and Design-Build Subcontractor's Senior Representative.

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

13.2.4 If the parties cannot resolve the dispute through mediation, the parties shall resolve the dispute through litigation; however, at the Design Builder's option, any dispute between Design Builder and Design Build Subcontractor may be determined through the dispute resolution provision set forth in a Design Build Agreement associated with a Scope of Work, and Design-Build Subcontractor shall accept, as full resolution of any Claim, the amounts received from Owner that are associated with Design-Build Subcontractor's Claim. In such case, such dispute resolution procedure shall be Design Build Subcontractor's sole means of recovery against Design Builder.

13.2.5 The substantially prevailing party in any final, binding dispute proceeding, including but not limited to litigation, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the substantially prevailing party. In determining the substantially prevailing party, the official presiding over the final, binding dispute proceeding shall consider the successful defense of claims.

13.3 Duty to Continue Performance

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

13.4 CONSEQUENTIAL DAMAGES

13.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 13.4.2 BELOW), NEITHER DESIGN-BUILDER NOR DESIGN-BUILD SUBCONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

13.4.2 Notwithstanding Section 13.4.1 above, Design-Builder shall be entitled to recover against Design-Build Subcontractor (i) any liquidated damages that Owner may assess against Design-Builder which are attributable to Design-Build Subcontractor, even though both parties recognize that such liquidated damages may include some damages that might otherwise be deemed to be consequential and (ii) consequential damages that may be imposed upon the Design-Builder by the Design-Build Agreement.

Article 14

Miscellaneous

14.1 Assignment

14.1.1 Neither Design-Build Subcontractor nor Design-Builder shall, without the written consent of the other, assign, transfer or sublet any portion or part of this Master Agreement, a Scope of Work or the obligations required by the Contract Documents.

14.2 Successorship

14.2.1 Design-Builder and Design-Build Subcontractor intend that the provisions of the Master Agreement, individual Scopes of Work and the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

14.3 Governing Law

14.3.1 The Master Agreement, Scopes of Work and all Contract Documents shall be governed by the laws of the place of a Project, without giving effect to its conflict of law principles.

14.4 Severability

14.4.1 If any provision or any part of a provision of this Master Agreement, a Scope of Work or the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Master Agreement, the Scope of Work or the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

14.5 No Waiver

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

14.6 Headings

14.6.1 The headings used in this Master Agreement, a Scope of Work, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

14.7 Notice

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

14.8 Amendments

14.8.1 Neither this Master Agreement, any individual Scope of Work nor the Contract Documents may be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

14.9 Survival

14.9.1 Design-Build Subcontractor's obligations under this Master Agreement and all Scopes of Work shall not be released, and shall specifically survive, the completion of all services hereunder by Design-Build Subcontractor, final payment to Design-Build Subcontractor, and the termination of this Agreement for any reason.

Article 15
Other Provisions

15.1 Neither this Master Agreement nor any Scopes of Work may be recorded. In the event that this Master Agreement or any Scope of Work is recorded by Design-Build Subcontractor or anyone

on their behalf, then all payments due hereunder shall cease to be due and owing until the Design Builder is satisfied that no encumbrances have or can be placed against the Project as a result of said recording.

In executing this Agreement, Design-Builder and Design-Build Subcontractor each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the Work described herein.

The Bennett Group, Ltd.

(Name of Design-Build Subcontractor)

(Signature)

By: _____
(Signature)

Scott Bennett
Its President

Printed Name: _____

Title: _____

Date: _____

Date: _____

