DESIGN-BUILD AGREEMENT
FOR THE
MONTEREY PENINSULA WATER SUPPLY PROJECT
DESALINATION INFRASTRUCTURE

between

CALIFORNIA-AMERICAN WATER COMPANY

and

~~[DESIGN-BUILDER]~~
CDM CONSTRUCTORS INC.

Dated as of

[December 20, 2013]

~~_____, 2013~~

~~RFP DRAFT – ADDENDUM 2~~

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17. Local Resources Utilization Plan
18. Construction Component Price Escalator

REFERENCE DOCUMENTS

1. Environmental Mitigation Measures (identified in Addendum 2 to the RFP)
2. ~~Form of CWSRF Loan Agreement~~Geotechnical Baseline Report

DESIGN-BUILD AGREEMENT
FOR THE
MONTEREY PENINSULA WATER SUPPLY PROJECT
DESALINATION INFRASTRUCTURE

THIS DESIGN-BUILD AGREEMENT FOR THE MONTEREY PENINSULA WATER SUPPLY PROJECT DESALINATION INFRASTRUCTURE is made and entered into as of [~~_____~~December 20], 2013, between California-American Water Company (the "Owner") and [~~_____~~], a [~~_____~~]CDM Constructors Inc., a corporation organized and existing under the laws of the State of [~~_____~~]Delaware and authorized to do business in the State of California (the "Design-Builder").

RECITALS

(A) The Owner is a public utility in the business of providing water service to approximately 40,400 connections that serve a population of approximately 94,000 people in the Monterey Peninsula service area.

(B) The Owner desires to develop a new water supply project for the Monterey Peninsula to replace existing surface and groundwater supplies (the "Monterey Peninsula Water Supply Project" or "MPWSP").

(C) The Owner plans to enter into a contract with a private entity for the obtaining governmental approvals for, designing, constructing, start up, commissioning and acceptance testing, of certain desalination infrastructure improvements which represent a significant component of the MPWSP.

(D) The Owner issued a request for qualifications on April 1, 2013, for design-build entities capable of designing and constructing the required desalination infrastructure improvements.

(E) Following evaluation of the statements of qualifications submitted in response to the request for qualifications and based upon the criteria set forth therein, the Owner selected [~~four~~]five firms for receipt of a request for proposals.

(F) A request for proposals was issued by the Owner to the five pre-qualified respondents on June 17, 2013.

(G) Proposals submitted in response to the request for proposals were received by the Owner on September 17, 2013.

(H) Based on the evaluations of the proposals and discussions with the proposers, the Owner determined that the proposal submitted by the Design-Builder was the most advantageous proposal.

(I) ~~[_____]~~CDM Smith Inc., an affiliate of the Design-Builder, will guarantee the Design-Builder's payment and performance ~~of the~~ obligations under this Design-Build Agreement pursuant to a separate guaranty agreement executed concurrently herewith.

(J) The Owner desires to receive, and the Design-Builder desires to provide, the services set forth in this Design-Build Agreement.

In consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Design-Build Agreement the following terms shall have the meanings set forth below:

"Acceptance" means demonstration in accordance with Article 4 (Acceptance of the Design-Build Improvements) and Appendix 7 (Acceptance Test Procedures and Requirements) that the Acceptance Tests have been conducted, the Acceptance Standards and Requirements have been achieved and all other Acceptance Date Conditions have been achieved.

"Acceptance Date" means the date on which Acceptance of the Design-Build Improvements occurs or is deemed to have occurred under Article 4 (Acceptance of the Design-Build Improvements).

"Acceptance Date Conditions" has the meaning specified in Section 4.4 (Acceptance Date Conditions).

"Acceptance Standards and Requirements" means the criteria and standards for the achievement of Acceptance set forth in Appendix 7 (Acceptance Test Procedures and Requirements).

"Acceptance Test" or **"Acceptance Testing"** means the test for Acceptance to be performed in accordance with Article 4 (Acceptance of the Design-Build Improvements), Appendix 7 (Acceptance Test Procedures and Requirements) and the Acceptance Test Plan.

"Acceptance Test Plan" means the testing protocols, procedures and processes for the performance of the Acceptance Tests prepared and documented by the Design-Builder and approved by the Owner in accordance with Section 4.3 (Acceptance Testing) and Appendix 7 (Acceptance Test Procedures and Requirements).

"Acceptance Test Readiness Date" means the date upon which the Design-Builder achieves all conditions set forth in subsection 4.3(C) (Conditions to Commencement of the Acceptance Test).

"Additional Finished Water Quality Standards and Requirements" has the meaning specified in Appendix 7 (Acceptance Test Procedures and Requirements).

"Affiliate" means any person directly or indirectly controlling or controlled by another person, corporation or other entity under direct or indirect common control with such person, corporation or other entity.

"Appendix" means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Design-Build Agreement, and identified as such in the Table of Contents.

"Applicable Law" means (1) any federal, State or local law, code, regulation, court decision or order; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case applicable from time to time to: (a) the siting, permitting, design, acquisition, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of the Design-Build Improvements; (b) the conveyance, treatment, storage or supply of water; (c) the air emissions therefrom; and (d) any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which pertain to water treatment, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination). Applicable Law shall be deemed to include OSHA and the Environmental Mitigation Measures.

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. "Bankruptcy Code" shall also include (1) any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) if the Guarantor is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

"Business Days" means Monday through Friday, excluding holidays recognized by the Owner.

"Capacity Reduction Modification" means the modification of the design in connection with the Owner's election (in accordance with subsection 3.16(D) (Capacity Reduction Election)) to reduce the capacity of the Design-Build Improvements as described in Appendix 2 (Design and Construction Requirements).

"Capacity Reduction Price Adjustment" means the downward adjustment in the Fixed Design-Build Price associated with the Capacity Reduction Modification, which reduction shall be ~~[$_____]. [Note: As proposed on Proposal Form 13A.]~~7,182,254.49.

"CDPH" means the California Department of Public Health, or any predecessor or successor agency.

"CPUC" means the California Public Utilities Commission.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

"CPCN" means the Certificate of Public Convenience and Necessity.

"Change in Law" means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferences with, delays, or increases the cost of performing the obligations of either party:

(a) except as provided below, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date, unless such Applicable Law was on or prior to the Contract Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(b) except as provided below, the order or judgment of any Governmental Body issued on or after the Contract Date enforcing any Change in Law described in subsection (a) of this definition to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Design-Builder or of the Owner, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(c) except as provided below, the denial of an application for, a delay in the review, issuance, or renewal of, or the suspension, termination, or interruption of any Governmental Approvals, or the imposition of a term, condition, or requirement on or after the Contract Date in connection with the issuance, renewal, or failure of issuance or renewal of, any Governmental Approval to the extent that such occurrence is not the result of willful or negligent action, error, or omission or a lack of reasonable diligence of the Design-Builder; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

A Change in Law includes changes in Applicable Law pertaining to drinking water standards for public water supply, to waste discharge, and to water rights that meet the criteria set forth in this definition.

It is specifically understood, however, that none of the following shall constitute a "Change in Law":

(i) delays, acts, events, and circumstances with respect to the Governmental Approvals (including the New Domestic Water Supply Permit), to the extent that the Design-Builder has expressly assumed the permitting risk under Article 3 (Permitting, Design, and Construction of the Design-Build Improvements) or subsection 4.2(D) (Design-Builder Assumption of Risk);

(ii) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Contract Date;

(iii) any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date; and

(iv) any act, event or circumstance that would otherwise constitute a Change in Law but that does not change the requirements imposed on the Design-Builder by the Contract Standards in effect as of the Contract Date.

Notwithstanding any other provision contained herein, it is specifically understood that each of the Additional Finished Water Quality Standards and Requirements are Contract Standards in effect as of the Contract Date.

"Change Order" means a written order duly authorize, executed, and issued by the Owner and agreed to in writing by the Design-Builder prior to Final Completion making a Design and Construction Requirement Change, whether made at Design-Builder request, due to Uncontrollable Circumstances, as a result of a term or condition imposed by a Governmental Body, or at the direction of the Owner, or otherwise making a Design-Build Price Adjustment, adjustment to the Scheduled Acceptance Date or other change to the terms and conditions of this Design-Build Agreement relating to the Design-Build Work. A Change Order shall be deemed to constitute a Design-Build Agreement Amendment.

"Construction Component Price" means ~~[$____]. [Note: As proposed on Proposal Form 13.]~~$75,816,677.65 for a 9.6 mgd plant and $68,755,123.16 if the Owner elects to reduce the capacity of the plant to 6.4 mgd, as such amounts may be adjusted as described in items (1), (5), and (6) of subsection 5.1(C)(Fixed Design-Build Price Adjustments).

"Construction Component Price Escalator" has the meaning set forth in Appendix 18 (Construction Component Price Escalator). ~~[Note: As proposed on Proposal Form 24.]~~

"Construction Date" means the date, following satisfaction of the Construction Date Conditions by the Design-Builder and issuance of the Notice to Proceed by the Owner, upon which the Design-Builder shall have the right to proceed with the physical construction of the Design-Build Improvements as determined in accordance with Section 3.2 (Construction Date Conditions).

"Construction Date Conditions" has the meaning specified in subsection 3.2(A) (Construction Date Conditions Generally).

"Construction Superintendent" has the meaning specified in subsection 3.17(B) (Construction Superintendent).

"Contract Administration Memorandum" has the meaning set forth in subsection 11.4(B) (Contract Administration Memoranda).

"Contract Administrator" means, in the case of the Design-Builder, the individual specified in writing by the Design-Builder as the administrator of this Design-Build Agreement on behalf of the Design-Builder from time to time for all purposes of this Design-Build Agreement and, in the case of the Owner, the individual specified in writing by the Owner as the administrator of this Design-Build Agreement on behalf of the Owner from time to time for all purposes of this Design-Build Agreement.

"Contract Date" means the date this Design-Build Agreement is fully executed and delivered by the parties hereto.

"Contract Standards" means the standards, terms, conditions, methods, techniques, and practices imposed or required by: (1) Applicable Law; (2) the Design and Construction Requirements; (3) Good Engineering and Construction Practice; (4) the Design-Build Quality Management Plan; (5) applicable written equipment manufacturers' specifications; (6) all Insurance Requirements; and (7) any other standard, term, condition or requirement specifically provided in this Design-Build Agreement to be observed by the Design-Builder. Subsection 1.2(T) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

"Cost Substantiation" means the process of providing evidence of costs incurred or to be incurred in accordance with Section 11.9 (Cost Substantiation).

"CWSRF" means the Clean Water State Revolving Fund.

"CWSRF Loan Agreement" means the loan agreement regarding the CWSRF loan from the State Water Resources Control Board to the Owner to partially fund the Project, a form of which is set forth as a Reference Document.

"Deliverable Material" means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to the Owner pursuant to this Design-Build Agreement, including the Design Documents.

"Design and Construction Requirements" means the design and construction requirements set forth in Appendix 2 (Design and Construction Requirements).

"Design and Construction Requirement Change" means a change in the Design and Construction Requirements made by a Change Order pursuant to Section 3.10 (Changes to the Design and Construction Requirements) (1) as a result of a Design-Builder request agreed to by the Owner, (2) on account of Uncontrollable Circumstances, (3) as a result of a term or condition imposed by a Governmental Body, or (4) at the direction of the Owner.

"Design-Build Agreement" means this Design-Build Agreement between the Design-Builder and the Owner, including the Appendices and the Transaction Forms, as the same may be amended or modified from time to time in accordance herewith.

"Design-Build Agreement Amendment" has the meaning set forth in Section 11.5 (Design-Build Agreement Amendments).

"Design-Build Improvements" means the improvements to be designed, constructed, installed, started up, commissioned, and Acceptance Tested by the Design-Builder in accordance with the Design and Construction Requirements set forth in Appendix 2 (Design and Construction Requirements) and the other Contract Standards.

"Design-Build Period" means the period from and including the Contract Date through the date of Final Completion.

"Design-Build Price" means the amount to which the Design-Builder is entitled to be paid for the performance of the Design-Build Work, as set forth in Section 5.1 (Design-Build Price).

"Design-Build Quality Management Plan" means the Design-Builder's plan ~~[NOTE: to be submitted by the Design-Builder as part of its proposal]~~ for quality assurance and quality control in implementing the Design-Build Work as set forth in Appendix 5 (Design-Build Quality Management Plan and Quality Control Requirements).

"Design-Build Work" means everything required to be furnished and done for and relating to the design, construction, and Acceptance of the Design-Build Improvements by the Design-Builder pursuant to this Design-Build

Agreement during the Design-Build Period. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities, and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder's design, engineering, construction, start up, Acceptance Testing, obtaining, and maintaining Governmental Approvals and related obligations with respect to the construction of the Design-Build Improvements during the Design-Build Period under this Design-Build Agreement, including all completed structures, assemblies, fabrications, acquisitions, and installations,; all commissioning and testing,; and all of the Design-Builder's administrative, accounting, recordkeeping, notification, and similar responsibilities of every kind whatsoever under this Design-Build Agreement pertaining to such obligations. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires, and shall include all Design and Construction Requirement Changes authorized by a Change Order.

"Design-Builder" means ~~[_____], a [_____]~~CDM Constructors Inc., a corporation organized and existing under the laws of the State of ~~[_____]~~Massachusetts, and its permitted successors and assigns.

"Design-Builder Acceptance Test Commencement Date Notice" has the meaning specified in subsection 4.3(B) (Notice of Commencement of the Acceptance Tests).

"Design-Builder Fault" means any breach (including the untruth or breach of any Design-Builder representation or warranty herein set forth), failure, non-performance or non-compliance by the Design-Builder with respect to its obligations and responsibilities under this Design-Build Agreement to the extent not attributable to any Uncontrollable Circumstance or Owner Fault, and which materially and adversely affects the Owner's rights, obligations, or ability or costs to perform under this Design-Build Agreement.

"Design Documents" means the Design-Builder's plans, technical specifications, drawings, record drawings, and other design and construction documents prepared in connection with the Design-Build Work.

"Differing Geotechnical Conditions" means subsurface geotechnical conditions discovered during the Design-Builder's pre-Construction Date geotechnical testing which could not have been reasonably anticipated based upon the Project Site-related information disclosed to the Design-Builder prior to the Contract Date (including the Geotechnical Baseline Report) and which would require a different foundation design and construction methodology, different dewatering methodologies or the removal and replacement of materials with more structurally suitable materials.

"Encumbrances" means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Design-Build Improvements, other than Permitted Encumbrances.

"Engineer" means a professional engineer licensed in the State in good standing who is designated by the Design-Builder and acceptable to the Owner, in its reasonable discretion, and is responsible for the preparation, signing, dating, sealing, and issuing of the engineering documents relating to a portion or all of the Design-Build Work.

"Environmental Mitigation Measures" means the environmental mitigation measures that have a 'X' marked in the "desal" box as set forth in Reference Document 1, as such document may be amended by Change Order following issuance of the final environmental impact report for the Project.

"EPA" means the United States Environmental Protection Agency and any successor agency.

"Event of Default" means, with respect to the Design-Builder, those items specified in Section 8.2 (Events of Default by the Design-Builder) and, with respect to the Owner, those items specified in Section 8.5 (Events of Default by the Owner), which may lead to termination of this Design-Build Agreement upon election of the non-defaulting party.

"Extension Period" means the period commencing on the day after the Scheduled Acceptance Date and ending ~~90~~135 days following the Scheduled Acceptance Date, or if one or more delays caused by Uncontrollable Circumstances occurring during such period, the date determined by adding to such ~~90~~135-day period the aggregate number of days of delay caused by such Uncontrollable Circumstances.

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

"Final Completion" means completion of the Design-Build Work in compliance with the Design and Construction Requirements and the applicable requirements of this Design-Build Agreement, as more particularly described in Section 3.21 (Final Completion).

"Final Punch List" has the meaning specified in Section 3.20 (Final Punch List).

"Finished Water" means Raw Water which has been treated at the plant for supply to the Owner's water customers.

"Fixed Design-Build Price" has the meaning specified in subsection 5.1(B) (Fixed Design-Build Price).

"Fixed Design-Build Price Adjustments" has the meaning specified in subsection 5.1(C) (Fixed Design-Build Price Adjustments).

"Geotechnical Baseline Report" means the report prepared by URS Corporation, dated June 2013, regarding geotechnical conditions at the Project Site.

"Good Engineering and Construction Practice" means those methods, techniques, standards, and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, commissioning, and testing practices for the design, construction, and improvement of capital assets in the ~~municipal~~ water treatment industry as followed in northern California.

"Governmental Approvals" means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements, and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Design-Build Work.

"Governmental Body" means any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission (including the California Public Utilities Commission), administration, court or other body, or any official thereof having jurisdiction.

"Governance Committee" means the oversight committee formed by the Owner, the Monterey Peninsula Regional Water Authority, the Monterey Peninsula Water Management District, and the County of Monterey pursuant to an agreement dated March 8, 2013, to ensure efficient and effective public input into the development and operation of the Project.

"Guarantor" means ~~[_____], a [_____]~~CDM Smith Inc., a corporation organized and existing under the laws of the State of ~~[_____]~~Massachusetts, and its successors and assigns permitted thereunder.

"Guaranty Agreement" or **"Guaranty"** means the Guaranty Agreement entered into concurrently with this Design-Build Agreement from the Guarantor to the Owner in the form set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

"Hazardous Material" means any waste, substance, object, or material deemed hazardous under Applicable Law including, without limitation, "hazardous substances" as defined under CERCLA and "hazardous waste" as defined in RCRA and in California Health and Safety Code Section 25117.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any insurance company which has issued a policy of Required Insurance under this Design-Build Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

"Interim Operations Approval" has the meaning set forth in Section 4.2 (Interim Operations Approval and New Domestic Water Supply Permit).

"Key Personnel" means any individual identified by the Design-Builder as having a lead capacity or a high level of authorization in a supervisory capacity, as set forth in Appendix 10 (Key Personnel and Approved Subcontractors).

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a material bearing upon this Design-Build Agreement or the performances of the parties hereunder, and all appeals therefrom.

"Letter of Credit" has the meaning specified in Section 10.3 (Letter of Credit).

"Lien" means any and every lien against the Design-Build Improvements or against any monies due or to become due from the Owner to the Design-Builder under this Design-Build Agreement, for or on account of the Design-Build Work, including mechanics', materialmen's, and laborers' liens.

"Loss-and-Expense" means, and is limited to, any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, Tax, cost or expense relating to third-party claims for which the Design-Builder is obligated to indemnify the Owner Indemnitees hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Design-Build Agreement.

"Mediator" means any person serving as a third-party mediator of disputes hereunder pursuant to Section 8.12 (Non-Binding Dispute Resolution Procedures).

"MG" or **"mg"** means millions of gallons.

"MGD" or **"mgd"** means millions of gallons per day.

"New Domestic Water Supply Permit" means the domestic water supply permit required to be issued by CDPH to the Owner following Substantial Completion, authorizing the Owner to use Finished Water from the Design-Build Improvements as a source of potable water for public consumption.

"Non-Binding Mediation" means the voluntary system of dispute resolution through third-party mediation established by Section 8.12 (Non-Binding Dispute Resolution Procedures) for the resolution of any dispute arising under this Design-Build Agreement.

"Notice of Completion" means the notice of completion filed in the Office of the Monterey County Clerk-Recorder pursuant to the California Civil Code section 8182 or successor statute.

"Notice to Proceed" has the meaning set forth in subsection 3.2(C) (Establishment of the Construction Date).

"Operation and Maintenance Manual" means the manual and related computer programs prepared by the Design-Builder containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules, and other matters relating to the Design-Build Improvements, developed and maintained as required by subsection 4.1(C) (Operation and Maintenance Manual), Appendix 4 (General Design-Build Work Requirements), and Appendix 9 (Operation and Maintenance-Related Deliverables).

"OSHA" means both the California Occupational Safety and Health Act, Chapter 3.2, Division 1, Title 8 of the California Code of Regulations, including all applicable regulations promulgated thereunder, and the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 *et seq.*, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.

"Owner" means California-American Water Company, a corporation organized and existing under the laws of the State of California, and its permitted successors and assigns.

"Owner Fault" means any breach (including the untruth or breach of any Owner representation or warranty herein set forth), failure, non-performance or non-compliance by the Owner with respect to its obligations and responsibilities under this Design-Build Agreement to the extent not attributable to any Uncontrollable Circumstance or Design-Builder Fault, and which materially and adversely affects the Design-Builder's rights, obligations or ability or costs to perform under this Design-Build Agreement.

"Owner Indemnitee" has the meaning specified in Section 9.5 (Indemnification by the Design-Builder).

"Owner's Representative" means a consulting engineer, firm of engineers, or an employee of the Owner having experience with respect to the permitting, design, construction, testing, operation, maintenance, repair, replacement, and management of water treatment facilities, designated as the Owner's Representative from time to time in writing by the Owner.

"Payment Bond" means the labor and materials payment bond provided by the Design-Builder ~~concurrently with the execution of this Design-Build Agreement~~prior to the Construction Date as described in and maintained pursuant to subsection 10.2(A) (Performance and Payment Bonds), in the form set forth in the Transaction Forms.

"Performance Bond" means the performance bond to be provided by the Design-Builder ~~concurrently with the execution of this Design-Build Agreement~~prior to the Construction Date as described in and maintained pursuant to subsection 10.2(A) (Performance and Payment Bonds), in the form set forth in the Transaction Forms.

"Permitted Encumbrances" means, as of any particular time, any one or more of the following:

(1) encumbrances for utility charges, taxes, rates, and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Design-Builder and against which the Design-Builder has established appropriate reserves in accordance with generally accepted accounting principles;

(2) any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Design-Builder, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Design-Builder to construct, or the Owner to operate, the Design-Build Improvements;

(3) any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors' or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Design-Builder and against which the Design-Builder has established appropriate reserves in accordance with generally accepted accounting principles;

(4) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way, and rights in the nature of easements or similar charges which will not in the aggregate materially and adversely impair the construction of the Design-Build Improvements by the Design-Builder or operation of the Design-Build Improvements by the Owner;

(5) zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Design-Build Improvements by the Design-Builder or operation of the Design-Build Improvements by the Owner;

(6) encumbrances which are created on or before the Contract Date;

(7) encumbrances which are created by a Change in Law on or after the Contract Date; and

(8) any encumbrance created by an act or omission by the Owner or with respect to which the Owner has given its consent.

"Preliminary Punch List" has the meaning set forth in Section 3.20 (Final Punch List).

"Prime Rate" means the prime rate as published in *The Wall Street Journal*, or a mutually agreeable alternative source of the prime rate if it is no longer published in *The Wall Street Journal* or the method of computation thereof is substantially modified.

"Project" means the Design-Build Improvements and includes the performance of the Design-Build Work relating thereto.

"Project Allowance" means an allowance totaling ~~$460,000~~1,826,266.51 representing the maximum costs for the Project Allowance Items as set forth in Appendix 12 (Allowances).

"Project Allowance Items" means those items included in the Design-Build Work the cost for which will be agreed upon following the Contract Date as set forth in Appendix 12 (Allowances).

"Project Site" means the parcel of real property described or referred to in Appendix 1 (Description of the Project Site) on which the above-ground and below-ground structures and equipment constituting the Design-Build Improvements are to be located.

"QA/QC Manager" means an employee of the Design-Builder, any Affiliate of the Design-Builder, or the Design-Builder's construction manager, designated by the Design-Builder as the individual responsible for ~~developing~~

~~and~~ implementing the Design-Build Quality Management Plan for the Design-Build Improvements, as set forth in Appendix 5 (Design-Build Quality Management Plan and Quality Control Requirements).

"Raw Water" means any untreated water conveyed to the Project Site for treatment.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

"Reference Documents" means those documents listed as Reference Documents in the Table of Contents.

"Regulated Site Condition" means, and is limited to, (1) the presence of surface or subsurface structures, materials or conditions having historical, archaeological, religious or similar significance; (2) the presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law; (3) the presence anywhere in, on or under the Project Site on the Contract Date of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances (in each of items (1), (2), and (3), however, only to the extent not disclosed to the Design-Builder as of the Contract Date or discoverable by the Design Builder as of the Contract Date based upon an industry standard level of due diligence which standards shall not include any independent, pre-Contract Date subsurface investigations), and (4) the presence of Regulated Substances in environmental media anywhere in, on or under the Project Site (including presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Design-Builder, but not including Regulated Substances used, stored or otherwise brought to the Project Site by the Design-Builder or any Subcontractor as provided in subsection 3.4(B) (Design-Builder Obligations with Respect to Specified Subsurface Conditions and Regulated Site Conditions).

"Regulated Substance" means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Materials.

"Required Insurance" has the meaning specified in Appendix 11 (Insurance Requirements).

"Requisition" means a written submission by the Design-Builder on the form of requisition as agreed to by the parties, together with accompanying submittals, requesting progress payments or final payment with respect to the Design-Build Price, and which is to be accompanied by such

supporting documentation as required by Article 5 (Payment of the Design-Build Price).

"Response Action" means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance. "Response Actions" include any action which constitutes a "removal", "response", or "remedial action" as defined by Section 101 of CERCLA.

"Restricted Person" means any person who (or any member of a group of persons acting together, any one of which):

(1) Is disbarred, suspended, or otherwise disqualified from federal, State or public utility contracting for any services similar in nature to the Design-Build Work (including those debarred by the California Division of Labor Standards Enforcement; *see* www.dir.ca.gov/dlse/debar.html);

(2) Was or is subject to any material claim of the United States, the State or the Owner in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the Owner's view, in either case, be reasonably likely to materially affect the ability of the Design-Builder to perform its obligations under this Design-Build Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Is a firm listed in Appendix 15 (Restricted Persons) as a Restricted Person.

"Scheduled Acceptance Date" means ~~the day [_____]consecutive calendar days following the Contract Date [Note: as proposed on Proposal Form 12]~~December 5, 2017, or~~,~~ if one or more delays caused by (1) Uncontrollable Circumstances during the Design-Build Period, (2) Change Orders during the Design-Build Period, or (3) the election of the Owner to direct the timing of the commencement of the Acceptance Test pursuant to Section 4.6 (Owner Right to Direct the Timing of the Commencement of the Acceptance Test), the date which is the next Business Day following the date calculated by adding to the Scheduled Acceptance Date the aggregate number of days of such delay. Any such extension in the Scheduled Acceptance Date shall be evidenced by a Contract Administration Memorandum or Change Order, as appropriate.

"Scheduled Construction Date" means ~~_____ [Note: as proposed on Proposal Form 12]~~November 18, 2015.

"Schedule of Values" means the detailed itemized list that establishes the value or cost of each detailed part of the Design-Build Work, and which is used as the basis for preparing progress payments during the Design-Build Period and is in the form required by Appendix 13 (Payment Procedures and Drawdown Schedule).

"Security Instruments" means the Guaranty Agreement, the Performance Bond, the Payment Bond, and the Letter of Credit.

"Senior Supervisors" has the meaning specified in subsection 11.3(B) (Design-Builder's Senior Supervisors).

"Specified Acceptance Test Commencement Date" has the meaning specified in subsection 4.6(B) (Owner Notice of Acceptance Test Commencement)

"Specified Raw Water Quality Parameters" means those Raw Water quality parameters which are listed in Table A7-8 in Appendix 7 (Acceptance Test Procedures and Requirements).

"Specified Subsurface Condition" means, and is limited to, the presence at the Project Site of: (1) any subsurface man-made object or structure; and (2) functioning subsurface structures used by Utility providers, unless, in each case, disclosed to the Design-Builder prior to the Contract Date.

"State" means the State of California.

"Subcontract" means an agreement or purchase order by the Design-Builder, or a Subcontractor to the Design-Builder, as applicable.

"Subcontractor" means every person (other than employees of the Design-Builder) employed or engaged by the Design-Builder or any person

directly or indirectly in privity with the Design-Builder (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Design-Build Work, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

"Substantial Completion" has the meaning specified in Section 3.19 (Substantial Completion).

"Tax" means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to the tax.

"Term" means the time period during which the obligations under this Design-Build Agreement are to be performed and shall begin on the Contract Date and end on the Termination Date.

"Termination Date" means the last day of the Term resulting from either a termination under Article 8 (Breach, Default, Remedies, and Termination) or expiration of the Warranty Period under Article 6 (Warranties).

"Transaction Agreement" means this Design-Build Agreement, the Performance Bond, the Payment Bond, and the Guaranty Agreement.

"Transaction Form" means any of the Transaction Forms appended to this Design-Build Agreement.

"Uncontrollable Circumstance" means any act, event or condition that (1) is beyond the reasonable control of the Design-Builder in relying on it as a justification for not performing an obligation or complying with any condition required of the Design-Builder under this Design-Build Agreement, and (2) materially expands the scope of, materially interferes with, materially delays or increases the cost of, performing the Design-Builder's obligations under this Design-Build Agreement, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Design-Build Agreement on the part of the Design-Builder in claiming the occurrence of an Uncontrollable Circumstance.

(1) Inclusions. Uncontrollable Circumstances may include the following, but only if and to the extent the foregoing requirements are met:

(a) a Change in Law, except as otherwise provided in this Design-Build Agreement;

(b) any injunction or similar order issued by a Governmental Body, provided that the Design-Builder is in compliance with the Contract Standards;

(c) the existence of a Specified Subsurface Condition, a Regulated Site Condition or Differing Geotechnical Condition to the extent provided in Section 3.4 (Specified Subsurface Conditions, Differing Geotechnical Conditions, and Regulated Site Conditions);

(d) contamination of the Project Site from groundwater, soil or airborne Regulated Substances migrating from sources outside of the Project Site and not caused by Design-Builder Fault;

(e) naturally occurring events (except weather conditions normal for the Project Site, including severe winter storms with high winds; heavy and extended rainfall; winter temperatures below freezing; hot, dry weather; thunderstorms; and early or late season rainfall and heavy fog, all not of an abnormally severe or extended nature) such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;

(f) explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(g) labor disputes, except labor disputes involving employees of the Design-Builder, its Affiliates, or Subcontractors, which affect the performance of the Design-Build Work;

(h) the failure of any Subcontractor (other than the Guarantor or any Affiliate) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Design-Builder directly, and the Design-Builder is not able after exercising all reasonable efforts to timely obtain substitutes;

(i) the failure of any Subcontractor to furnish equipment which is critical to the Design-Build Improvements and which is manufactured only at facilities located outside of the United States; but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Design-Builder directly, and the Design-Builder is not able after exercising all reasonable efforts to timely obtain substitutes;

(j) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Design-Build Improvements is located to provide and maintain Utilities to the Design-Build Improvements which are required for the performance of this Design-Build Agreement;

(k) a defect, flaw, error, inoperability, inadequacy or unavailability of the Raw Water intake facilities or Finished Water transmission which are not part of the Design-Build Improvements or a delay in completion of any such facilities;

(l) variations in the nature, condition or quality of Raw Water, as and to the extent provided in Appendix 2 (Design and Construction Requirements) and Appendix 7 (Acceptance Test Procedures and Requirements);

(m) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Design-Build Improvements or Project Site;

(n) a moratorium or other formalized suspension or interruption of the processing or issuance of the New Domestic Water Supply Permit by the CDPH;

(o) a violation of Applicable Law by a person other than the affected party or its Subcontractors; or

(p) any Owner Fault and Owner-directed Change Orders not due to Design-Builder Fault.

(2) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(a) any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;

(b) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices;

(c) any changes in the financial condition of the Design-Builder, the Guarantor or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(d) the consequences of error, neglect or omissions by the Design-Builder, the Guarantor, any Subcontractor, any of their Affiliates or any other person in the performance of the Design-Build Work;

(e) union or labor work rules, requirements or demands which have the effect of increasing the cost to the Design-Builder of performing the Design-Build Work;

(f) any impact of prevailing wage or similar laws, customs or practices on the Design-Builder's costs;

(g) weather conditions normal for the Project Site (including severe winter storms with high winds; heavy and extended rainfall; winter temperatures below freezing; hot, dry weather; thunderstorms; and early or late season rainfall and heavy fog, all not of an abnormally severe or extended nature);

(h) any and all surface, subsurface, and other conditions affecting the Project Site, which may increase costs of performing or cause delay in the performance of the Design-Build Work, except those constituting Specified Subsurface Conditions or Regulated Site Conditions to the extent provided in Section 3.4 (Specified Subsurface Conditions, Differing Geotechnical Conditions, and Regulated Site Conditions);

(i) except as provided in item (i) of the "Inclusions" section of this definition, any act, event, circumstance or Change in Law occurring outside of the United States;

(j) mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

(k) failure of the Design-Builder to secure any patent or other intellectual property right which is or may be necessary for the performance of the Design-Build Work; or

(l) except as provided in item (a) of the "Inclusions" section of this definition, a Change in Law pertaining to Taxes.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Warranty Period" has the meaning set forth in subsection 6.5(A) (Call-Back Generally).

"Warranty Work" has the meaning specified in subsection 5.1(D) (Limitation on Payment for Costs of the Design-Build Improvements).

SECTION 1.2. INTERPRETATION.

This Design-Build Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Design-Build Agreement otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Design-Build Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms "hereby," "hereof," "herein," "hereunder," and any similar terms refer to this Design-Build Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words "include", "includes," and including" are to be construed as meaning "include without limitation", "includes without limitation," and "including without limitation", respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates, or replaces the statute or statutory provision or which has been amended, extended, consolidated, or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice, or instruments made under the relevant statute.

(H) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, notated or assigned.

(K) References to All Reasonable Efforts. The expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit.

(L) References to Treatment. The terms "treat," "treated," "treatment," "treating" and any similar terms, when used with respect to Raw Water, shall mean and refer to the operation of the Design-Build Improvements (both before and after Acceptance) to clarify, filter, disinfect, remove impurities from, and otherwise treat Raw Water and supply Finished Water to the Owner's water customers, all in accordance with this Design-Build Agreement.

(M) Entire Design-Build Agreement. This Design-Build Agreement, including the Appendices hereto and the Transaction Forms, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Design-Build Agreement. Without limiting the generality of the foregoing, this Design-Build Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(N) Counterparts. This Design-Build Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Design-Build Agreement.

(O) Governing Law. This Design-Build Agreement shall be governed by and construed in accordance with the applicable laws of the State.

(P) Severability. Each provision of this Design-Build Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Design-Build Agreement is held to be invalid, unenforceable, or illegal to any extent, such provision be severed and such invalidity, unenforceability, or illegality shall not prejudice or affect the validity, enforceability, and legality of the remaining provisions of this Design-Build Agreement. If any such provision of this Design-Build Agreement is held to be invalid, unenforceable, or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability, or

illegality and to restore this Design-Build Agreement as nearly as possible to its original intent and effect.

(Q) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Design-Build Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(R) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(S) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(T) Applicability, Stringency and Consistency of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Design-Builder hereunder, each such applicable Contract Standard shall be complied with. If there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. Any reference in this Design-Build Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Design-Builder to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Design-Build Agreement.

(U) Delivery of Documents in Digital Format. In this Design-Build Agreement, the Design-Builder is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals, and other documentary submittals in connection with the performance of its duties hereunder. The Design-Builder agrees that all such documents shall be submitted to the Owner both in printed form (in the number of copies indicated) and, at the Owner's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the Owner may reasonably request to facilitate the administration and enforcement of this Design-Build Agreement. If a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(V) Owner Obligations to Provide Assistance. Any obligation of the Owner to cooperate with, to assist or to provide assistance to the Design-Builder hereunder shall be construed as an obligation to use the Owner's personnel resources to the extent reasonably available in the context of

performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the Design-Builder.

(W) Third-Party Rights. This Design-Build Agreement is exclusively for the benefit of the Owner and the Design-Builder and shall not provide any third parties (with the sole exceptions of the rights of any third-party Owner Indemnitees as provided in Section 8.5 (Indemnification by the Design-Builder)) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(X) Discretion. When a party has "discretion", it means that party has the sole, absolute, and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Design-Build Agreement.

(Y) Liquidated Damages. This Design-Build Agreement provides for the payment by the Design-Builder of liquidated damages in certain circumstances. The parties agree that the Owner's actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the Owner in the same economic position as it would have been in had the circumstance not occurred. Such liquidated damages shall constitute the only damages payable by the Design-Builder to the Owner in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit the Owner's right to terminate this Design-Build Agreement in accordance with Section 8.2 (Events of Default by the Design-Builder) or to enforce its right to indemnification set forth in Section 9.5 (Indemnification by the Design-Builder).

(Z) Design and Construction Requirements. The Design and Construction Requirements are intended to include the basic design principles, concepts, and requirements for the Design-Build Work but do not include the final, detailed design, plans, or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work or for achieving Acceptance. The Design-Builder agrees to prepare all necessary and required, complete and detailed designs, plans, drawings, and specifications and to furnish and perform all Design-Build Work in conformity with the Design and Construction Requirements and the final designs, plans, drawings, and specifications based thereon. The Design-Builder further agrees that it shall not have the right to bring any claim whatsoever against the Owner or any of its consultants or subcontractors, arising out of any design drawings, specifications, or Design and Construction Requirements made available during the procurement process.

(AA) Standards of Workmanship and Materials. Any reference in this Design-Build Agreement to materials, equipment, systems or supplies

(whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Design-Builder to furnish the same in accordance with the grades and standards therefor indicated in this Design-Build Agreement. Where this Design-Build Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Design-Builder shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Design and Construction Requirements, and the Design and Construction Requirements are to be interpreted accordingly.

(BB) Technical Standards and Codes. References in this Design-Build Agreement to all professional and technical standards, codes, and specifications are to the most recently published professional and technical standards, codes, and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes, and specifications shall apply as if incorporated in the Design and Construction Requirements and (2) if any material revision occurs, to the Design-Builder's knowledge, after the Contract Date, and prior to completion of the applicable Design-Build Work, the Design-Builder shall notify the Owner. If so directed by the Owner, the Design-Builder shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code, or specification as long as the Design-Build Price is increased to account for any additional cost or expense attributable to any such revision and any applicable schedule under the Design-Build Agreement (including the Scheduled Acceptance Date) is extended to the extent necessary to implement such changed standards, codes, or specifications.

(CC) Causing Performance. A party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Design-Build Agreement.

(DD) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Design-Build Price.

(EE) Defined Terms. The definitions set forth in Section 1.1 (Definitions) shall control if any conflict with any definitions used in the recitals hereto.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE OWNER.

The Owner represents and warrants that:

(A) Existence and Powers. The Owner is a corporation, duly organized, validly existing, and in good standing under the laws of the State, with full legal right, power, and authority to enter into and to perform its obligations under this Design-Build Agreement.

(B) Due Authorization. This Design-Build Agreement has been duly authorized, executed, and delivered by all necessary corporate action of the Owner and constitutes a legal, valid, and binding obligation of the Owner, enforceable against the Owner in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution and delivery by the Owner of this Design-Build Agreement nor the performance by the Owner of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Owner of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any law or governmental regulation, by-laws or certificate of incorporation applicable to the Owner; or (2) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the Owner is a party or by which the Owner or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery by the Owner of this Design-Build Agreement.

(E) No Litigation. Except as disclosed to the Design-Builder, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against the Owner, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Design-Build Agreement by the Owner or the validity, legality or enforceability of this Design-Build Agreement against the Owner, or on the ability of the Owner to perform its obligations hereunder.

(F) Owner Ownership Interest in the Project Site. The Owner owns the Project Site in fee simple, subject to the easements and other exceptions to title indicated in Appendix 1 (Description of the Project Site).

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE DESIGN-BUILDER.

In addition to any other representations and warranties made by the Design-Builder in this Design-Build Agreement, the Design-Builder represents and warrants that:

(A) Existence and Powers. The Design-Builder is a ~~[_____]~~corporation duly organized, validly existing ,and in good standing under the laws of the State of ~~[_____]~~Massachusetts, and has the authority to do business in this State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Design-Build Agreement.

(B) Due Authorization. This Design-Build Agreement has been duly authorized, executed, and delivered by all necessary corporate action of the Design-Builder and constitutes a legal, valid, and binding obligation of the Design-Builder, enforceable against the Design-Builder in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Design-Builder of this Design-Build Agreement nor the performance by the Design-Builder of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Design-Builder of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any law, governmental regulation, by-laws or certificate of incorporation applicable to the Design-Builder or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Design-Builder is a party or by which the Design-Builder or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Design-Build Agreement by the Design-Builder except as such have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Owner, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Design-Builder's knowledge, overtly threatened or publicly announced against the Design-Builder, in which an unfavorable decision, ruling or finding could

reasonably be expected to have a material and adverse effect on the execution and delivery of this Design-Build Agreement by the Design-Builder or the validity, legality or enforceability of this Design-Build Agreement against the Design-Builder, or on the ability of the Design-Builder to perform its obligations hereunder.

(F) Practicability of Performance. The Design and Construction Requirements, the technology and the construction management practices to be employed in the Design-Build Work are furnished exclusively by the Design-Builder and its Subcontractors pursuant to the terms of this Design-Build Agreement, and the Design-Builder assumes and shall have exclusive responsibility for their efficacy, notwithstanding the involvement of the Owner in the development of the Design and Construction Requirements, Acceptance Test Procedures or design and construction reviews. The Design-Builder assumes the risk of the practicability and possibility of performance of the Design-Build Improvements on the scale, within the time for completion, and in the manner required hereunder, even though such performance may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Design-Builder in entering into this Design-Build Agreement, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Design-Build Price. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance.

(G) Patents and Licenses. The Design-Builder owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Design-Build Improvements without any known material conflict with the rights of others.

(H) Information Supplied by the Design-Builder and the Guarantor. The information supplied and representations and warranties made by the Design-Builder and the Guarantor in all submittals made to the Owner with respect to the Design-Builder and the Guarantor (and to the Design-Builder's knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct, and complete in all material respects.

(I) Letter of Credit. Concurrently with the execution of this Design-Build Agreement, the Design-Builder has provided the Owner with the Letter of Credit as financial security for the faithful performance and payment of its obligations hereunder. The Letter of Credit is in the form set forth in the Transaction Forms, and is in compliance with the requirements of Section 10.3 (Letter of Credit).

(J) Required Insurance. Concurrently with the execution of this Design-Build Agreement, the Design-Builder has provided the Owner with certificates of insurance for all liability and errors and omissions insurance

specified in Appendix 11 (Insurance Requirements). Such insurance is in compliance with the requirements of Article 9 (Insurance).

(K) No Prohibited Contact. The Design-Builder and its employees, representatives, and agents have not contacted any Owner employee (other than the procurement contact, Lori Girard, regarding the procurement process, or other Owner employees in connection with the negotiation of this Design-Build Agreement); any Restricted Person identified in Appendix 15 (Restricted Persons); any County of Monterey official, representative or staff member; any Monterey Peninsula Regional Water Authority official, representative, technical advisory committee member or staff member; or any Monterey Peninsula Water Management District official, representative or staff member, on any matter relating to the Project, the MPWSP or thisthe procurement process.

ARTICLE 3

PERMITTING, DESIGN, AND CONSTRUCTION OF THE DESIGN-BUILD IMPROVEMENTS

SECTION 3.1. DESIGN-BUILD WORK GENERALLY.

(A) Commencement of Design-Build Work. On the Contract Date, the Design-Builder shall promptly proceed to undertake, perform, and complete the Design-Build Work in accordance with the Contract Standards. The Design-Builder shall be paid the Design-Build Price pursuant to Section 5.1 (Design-Build Price) as its entitlement to portions of the Design-Build Price arise in accordance with that Section. The Design-Builder's failure to achieve Acceptance on or before the Scheduled Acceptance Date shall give the Owner the right to assess delay liquidated damages under Section 4.5 (Scheduled Acceptance Date and Delay Liquidated Damages). Failure to achieve Acceptance by the end of the Extension Period shall constitute a Design-Builder Event of Default upon which the Owner may terminate this Design-Build Agreement for cause in accordance with Section 8.2 (Events of Default by the Design-Builder).

(B) Elements of the Design-Build Work. In performing the Design-Build Work generally, the Design-Builder shall, in accordance with the Contract Standards and without limitation: (1) apply for, obtain, and maintain all Governmental Approvals required for the Design-Build Work other than those Governmental Approvals set forth in Appendix 3 (Governmental Approvals) which will be obtained by the Owner; (2) comply with all reporting obligations set forth herein; (3) prepare and excavate the Project Site; (4) remove from the Project Site and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom; (5) design and construct the Design-Build Improvements; (6) conduct commissioning and start up operations; (7) conduct the Acceptance Tests and achieve Acceptance; (8) achieve Final Completion; and (9) perform its obligations during the Warranty Period; all so that the Design-Build Improvements are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Project Site, as indicated in Appendix 2 (Design and Construction Requirements), or at other locations approved by the Owner and any other appropriate Governmental Body and arranged and paid for by the Design-Builder.

(C) Sequencing and Staging of Design-Build Work. The Design-Builder shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. The Owner understands and acknowledges that the Design-Builder intends to complete the Design-Build Work in stages whereby particular segments of the Design-Build Work will be designed and built prior to the completion of the design of the Design-Build Improvements as a whole. Although this Design-Build Agreement does not require the Design-Builder to fully complete the entire

design of the Design-Build Improvements prior to proceeding with particular segments of the physical construction of the Design-Build Improvements, the Design-Builder shall comply with all requirements of Applicable Law in performing the Design-Build Work and shall comply with the design submittal requirements set forth in subsection 3.9(C) (Owner Review and Comment on Design Documents). The Design-Builder shall comply with Good Engineering and Construction Practice and all other Contract Standards in all aspects of the performance of the Design-Build Work. In no event shall the Design-Builder proceed with the physical construction of any segment of the Design-Build Improvements prior to the Construction Date established in accordance with Section 3.2 (Construction Date Conditions).

(D) Schedule and Reports. The Design-Builder shall prepare and provide the Owner with a work sequence schedule for Design-Build Work in accordance with Appendix 4 (General Design-Build Work Requirements). Throughout the Design-Build Period, the Design-Builder shall submit to the Owner and the Owner's Representative a monthly progress report and schedule including among other things an update of the work sequence schedule in accordance with the requirements of Appendix 6 (Design-Build Work Review Procedures). The Design-Builder agrees that the Design-Builder's submission of the monthly progress schedule and report (or any revised progress schedule and report) is for the Owner's and the Owner's information only. The Design-Builder's submission of the monthly progress schedule and report shall not limit or otherwise affect the Design-Builder's obligations to achieve Acceptance by the Scheduled Acceptance Date. The Owner's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the Owner in any manner. Thus, the Owner's receipt and review of the monthly progress schedule and report (or any revised monthly progress schedule and report) shall not imply Owner approval or consent to any of the matters set forth therein.

(E) Quality Assurance and Quality Control. The Design-Builder shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan, as set forth in Appendix 5 (Design-Build Quality Management Plan and Quality Control Requirements). ~~[Note: Design-Build Quality Management Plan to be submitted by Proposer and developed with Owner input.]~~

(F) Subcontracting and Licensing. Section 11.10 (Use of Subcontractors) shall be applicable to the Design-Builder's use of Subcontracts and Subcontractors in connection with the Design-Build Work. The Design-Builder and any Subcontractor that performs any construction portion of the Design-Build Work shall possess and maintain a California contractors license as required by Applicable Law.

(G) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment, and materials constituting the Design-Build Improvements shall pass to the Owner upon installment on the Project Site or payment therefor by the Owner, whichever first occurs, free and clear of all Liens as provided in subsection (J) of this Section. The Design-Builder shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment, and materials in excess of all insurance proceeds available in connection with such loss prior to Final Completion.

(H) Damage or Destruction to the Design-Build Work. In performing the Design-Build Work, the Design-Builder shall use care and diligence, and shall take all appropriate precautions to protect the Design-Build Improvements from loss, damage or destruction in accordance with the Contract Standards. The procedures set forth in Section 9.2 (Loss, Damage or Destruction to the Design-Build Improvements) shall be applicable during the Design-Build Period if any damage to, or the destruction of, any Design-Build Work.

(I) Encumbrances. The Design-Builder shall not directly or indirectly, without the Owner's consent, create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance arising on the Design-Build Improvements, Project Site or Design-Build Work (other than Permitted Encumbrances) arising out of or in connection with (1) the Design-Builder's performance of the Design-Build Work, or (2) any acts, omissions or debts of the Design-Builder, the Guarantor, their Affiliates and their Subcontractors.

(J) Utilities Generally. The Design-Builder shall make all arrangements necessary to secure the availability of all Utilities required to construct the Design-Build Improvements, and shall install and utilize on-site power generators for the performance of the Design-Build Work (as necessary). If the Owner is required to grant Utility easements on the Project Site in connection with the Design-Build Work, the Design-Builder shall provide complete descriptions of all Utility connections and routes on the Project Site necessary for such purposes.

(K) Software Programming. The Design-Builder's obligation to perform the Design-Build Work includes providing all software and programming for monitoring instrumentation, alarms, shutdowns, and control systems required for the Project to meet Owner and Governmental Body requirements, as specifically set forth in Appendix 2 (Design and Construction Requirements).

(L) Payment of Costs. The Design-Builder shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of permitting (except with respect to Owner's costs associated with the Governmental Approvals to be obtained by the Owner set forth in Appendix 3 (Governmental Approvals)); regulatory compliance and

Legal Proceedings brought against the Design-Builder; obtaining and maintaining the Security Instruments and Required Insurance; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Design-Builder; sales, use and similar Taxes on building supplies, materials and equipment; general supervision by the Design-Builder of all Design-Build Work; Design-Builder preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Final Completion. The Design-Builder shall be compensated for the Design-Build Work as provided in Article 5 (Payment of the Design-Build Price) and Appendix 13 (Payment Procedures and Drawdown Schedule).

(M) Notice of Default. The Design-Builder shall provide to the Owner, promptly following the receipt thereof, copies of any notice of default, breach, or non-compliance received under or in connection with any Governmental Approval or Subcontract pertaining to the Design-Build Work.

(N) Required Design-Builder Engineer Certification. Any notice, certification, report, or application delivered by the Design-Builder to the Owner in connection with the Design-Build Work, or payment therefor, under this Article, Article 4 (Acceptance and Final Completion of the Design-Build Improvements) or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed and sealed certificate of the Design-Builder's Engineer affirming the accuracy thereof to the best of his or her knowledge. The form of certificates required pursuant to this subsection shall comply with all requirements of Applicable Law for engineer certifications.

(O) Statement Required by California Business and Professions Code Section 7030. Construction contractors are required by State law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any question concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 2600, Sacramento, California 95826.

(P) Design-Build Alternatives. The Owner shall have the right by written notice to elect to accept one or more of the alterative proposals made by the Design-Builder that are included in Appendix 8 (Design-Build Alternatives). Such election must be made within the applicable time period set forth in Appendix 8 (Design-Build Alternatives). Upon exercising such right, the alternative(s) selected shall be incorporated as a Design and Construction Requirement; the Design-Build Price and the Construction Component Price shall be adjusted based upon the reduction(s) set forth in Appendix 8 (Design-Build Alternatives), as escalated by the Construction Component Price Escalator; and

the Design-Builder shall implement such alternative(s) in accordance with the Contract Standards.

SECTION 3.2. CONSTRUCTION DATE CONDITIONS.

(A) Construction Date Conditions Generally. The "Construction Date" shall be the date established pursuant to subsection (C) of this Section upon satisfaction by the Design-Builder of its obligations pursuant to subsection (B) of this Section and issuance of a Notice to Proceed by the Owner. The requirements and conditions set forth in subsection (B) of this Section shall be the "Construction Date Conditions" hereunder.

(B) Conditions to Commencement of Physical Construction. In no event shall the Design-Builder commence physical construction of the Design-Build Improvements, including the pouring of foundations, prior to the satisfaction, or written waiver by the Owner, of the following Construction Date Conditions and receipt of the Notice to Proceed from the Owner:

(1) The Design-Builder shall have provided the Owner with the Performance Bond, the Payment Bond, and the Letter of Credit and shall certify that the Performance Bond, the Payment Bond, and the Letter of Credit are in full force and effect and in compliance with the requirements of ~~Section~~Sections 10.2 (Bonds) and 10.3 (Letter of Credit).

(2) The Design-Builder shall have provided the Owner with certificates for all Required Insurance in accordance with Article 9 (Insurance) and shall certify that all such policies are in full force and effect and in compliance with the requirements of Article 9 (Insurance) and Appendix 11 (Insurance Requirements).

(3) The Design-Builder shall have certified that it has completed all pre-construction requirements set forth in Appendices 2 (Design and Construction Requirements) and 4 (General Design-Build Work Requirements), and shall have provided the Owner the Design-Build Quality Management Plan in accordance with Appendix 5 (Design-Build Quality Management Plan and Quality Control Requirements).

(4) The Design-Builder shall have submitted a design submittal protocol in accordance with the requirements of Appendix 6 (Design-Build Work Review Procedures) and shall have complied with the design submittal requirements set forth in subsection 3.9(C) (Owner Review and Comment on Design Documents) to the extent necessary to commence with the physical construction of the Design-Build Improvements.

(5) The Design-Builder shall have satisfied all requirements of Applicable Law necessary for the commencement of construction and shall have obtained all Governmental Approvals for which it is responsible for obtaining pursuant to Appendix 3 (Governmental Approvals) required for the commencement of the physical construction of the Design-Build Improvements and all such Governmental Approvals shall be in full force and effect.

(6) The Design-Builder shall have submitted a site plan to the Owner in a form acceptable to the Owner acting reasonable.

(7) The Design-Builder shall have prepared and provided to the Owner a "critical path" construction schedule detailing the anticipated dates corresponding to the occurrence of critical path items in connection with the Design-Build Work.

(8) The Design-Builder shall have cooperated with and assisted the Owner in all activities relating to the CWSRF Loan Agreement in accordance with subsection 3.11(F) (CWSRF Funding Responsibilities).

(9) The Design-Builder shall have obtained and furnished to the Owner a letter of conditional approval from the CDPH with respect to the engineering design for the Design-Build Improvements, on the basis of which construction is to be commenced.

(C) Establishment of the Construction Date. The Design-Builder shall provide written notice to the Owner when it has satisfied all of the Construction Date Conditions and the date it proposes to establish as the Construction Date hereunder. If the Owner agrees that all of the Construction Date Conditions have been met it shall issue a written notice to proceed (the "Notice to Proceed") to the Design-Builder and the Construction Date will be deemed to have occurred on the date of such notice. If the Owner elects to delay issuance of the Notice to Proceed notwithstanding the satisfaction of the Construction Date Conditions (which may occur for example if the CPUC has not issued the CPCN), (1) the Construction Date shall be the date stipulated as such by the Owner in the Notice to Proceed, (2) the Scheduled Acceptance Date shall be extended by the number of days between the Construction Date proposed by the Design-Builder and the actual Construction Date established by the Owner in its Notice to Proceed, and (3) the Construction Component Price shall continue to escalate as set forth in subsection 5.1(C) (Fixed Design-Build Price Adjustments). If the Owner determines that the Design-Builder has not satisfied the Construction Date Conditions, notwithstanding the Design-Builder's notice pursuant to this Section, the Owner shall indicate which conditions the Design-Builder has failed to satisfy in its notice to the Design-Builder pursuant to this subsection, the Design-Builder shall satisfy all such conditions prior to the establishment of the Construction Date, and there shall be no adjustment to

the Scheduled Acceptance Date or escalation of the Construction Component Price of the Fixed Design-Build Price under this subsection.

(D) Effect of the Establishment of the Construction Date. Upon the establishment of the Construction Date, the Design-Builder shall have the right to proceed with the physical construction of the Design-Build Improvements and shall have full access to the Project Site in accordance with subsection 3.3(C) (Access to the Project Site). In addition, the maximum payment for demobilization costs ~~if~~upon a convenience termination by the Owner following the Construction Date shall increase in accordance with subsection 8.6(C) (Owner Convenience Termination Right Option After the Construction Date and Prior to Final Completion). Absent the occurrence of a Change in Law or an Uncontrollable Circumstance as and to the extent provided in subsection 3.6(I) (Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations) and except as provided in subsection (C) of this Section with respect to the Owner's right to delay the establishment of the Construction Date notwithstanding the satisfaction of the Construction Date Conditions, no delay in the establishment of the Construction Date beyond the Scheduled Construction Date shall entitle the Design-Builder to further escalation of the Construction Component Price of the Fixed Design-Build Price or any other price, schedule or performance relief hereunder.

(E) Limitation on Owner Payment Responsibility Prior to Issuance of CPCN. Prior to the issuance of the CPCN by the CPUC, notwithstanding the permitting, design or other work performed or the total costs incurred by the Design-Builder, in no event shall the Owner be liable or responsible for the payment of more than $2,500,000 to the Design-Builder for Design-Build Work. ~~[Note: It is~~ The ~~intention of CAW~~parties acknowledge that the primary obligation of the Design-Builder prior to issuance of the CPCN is to prepare designs and supply information necessary to assist CAW in obtaining the Coastal Development Permit from the California Coastal Commission.~~]~~ The Design-Builder shall notify the Owner as it approaches the limit ($250,000 remaining), so that the Owner can determine whether to increase the limit. If the Owner does not agree to increase the limit following such notice, the Design-Builder shall have the right to notify the Owner in writing that it will suspend its Design-Build Work once it has requisitioned the full amount of the limit. The Design-Builder shall be entitled to schedule relief (but not price relief except for escalation of the Construction Component Price in accordance with subsection 5.1(C)(3) (Fixed Design-Build Price Adjustments)) in the event of a suspension pursuant to this subsection and such suspension adversely affects the Design-Builder's critical path schedule.

SECTION 3.3. ACCESS TO AND SUITABILITY OF THE PROJECT SITE.

(A) Familiarity with the Project Site. The Design-Builder acknowledges that the Design-Builder's agents and representatives have visited, inspected and are familiar with the Project Site and surface physical conditions

relevant to the obligations of the Design-Builder pursuant to this Design-Build Agreement, including normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions; that the Design-Builder is familiar with all local and other conditions which may be material to the Design-Builder's performance of its obligations under this Design-Build Agreement (including, but not limited to transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed all information regarding the Project Site provided to it as part of the Project Site-related information or obtained in the course of performing its obligations hereunder, has made any other site investigations, other than independent geotechnical investigations, that it deems necessary to make a determination as to the suitability of the Project Site; and that based on the foregoing, the Project Site constitutes an acceptable and suitable site for the construction of the Design-Build Improvements in accordance herewith, and the Design-Build Improvements can be constructed on the Project Site for the Fixed Design-Build Price and can be completed by the Scheduled Acceptance Date. The Design-Build Improvements shall be located at the Project Site in a manner that takes into account the easements and other exceptions to title indicated in Appendix 1 (Description of the Project Site).

(B) Independent Verification. The Design-Builder acknowledges that it is responsible for the independent verification and confirmation of all information supplied to it by or on behalf of the Owner and upon which it elects to rely in connection herewith. No error or omission in any information supplied to the Design-Builder by or on behalf of the Owner shall constitute an Uncontrollable Circumstance, or relieve the Design-Builder from any of its obligations or entitle the Design-Builder to any increase in compensation hereunder, except to the extent provided in Section 3.4 (Specified Subsurface Conditions, Differing Geotechnical Conditions, and Regulated Site Conditions) with respect to Specified Subsurface Conditions, Regulated Site Conditions and Differing Geotechnical Conditions.

(C) Access to the Project Site. The execution of this Design-Build Agreement shall be deemed to constitute the granting of a license to the Design-Builder to access the Project Site for the purposes of performing such engineering and analysis, including such additional subsurface and geotechnical studies or tests as deemed necessary by the Design-Builder for the performance of the Design-Build Work prior to the Construction Date. Such access shall be subject to the Owner's prior approval, which shall not be unreasonably withheld, as to time and scope. Except to the extent provided in Section 3.4 (Specified Subsurface Conditions, Differing Geotechnical Conditions, and Regulated Site Conditions) with respect to Specified Subsurface Conditions and Regulated Site Conditions, the Design-Builder shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the Owner Indemnitees in accordance with and to the extent provided in Section 9.5 (Indemnification by the Design-Builder) from and against all Loss-and-Expense resulting

therefrom. Following the Construction Date, the Design-Builder shall have all Project Site access rights as are necessary for the performance of the Design-Build Work during the Term and such access rights shall not be subject to prior Owner approval. The Owner shall use good faith efforts to cooperate with the Design-Builder with respect to Design-Builder requests (in writing and upon reasonable notice) regarding scheduling of outages and other reasonable and agreed upon accommodations necessary for planned construction, start up and testing activities; provided, however, that it is the responsibility of the Design-Builder to schedule and perform such activities in accordance with the Design-Builder's plant operations during construction plan and agreed-upon schedules and in a manner which will not interfere with the ability of the Owner to operate the Design-Build Improvements so that it can continually meet all Applicable Law, including requirements of Governmental Approvals to which it is subject.

(D) Owner Responsibility for Specified Subsurface Conditions, Regulated Site Conditions, and Differing Site Conditions. Nothing in this Section shall be deemed to limit or otherwise affect the scope of the Owner's obligations with respect to Specified Subsurface Conditions, Regulated Site Conditions and Differing Geotechnical Conditions, as expressly set forth in Section 3.4 (Specified Subsurface Conditions, Differing Geotechnical Conditions, and Regulated Site Conditions) of this Design-Build Agreement.

SECTION 3.4. SPECIFIED SUBSURFACE CONDITIONS, DIFFERING GEOTECHNICAL CONDITIONS, AND REGULATED SITE CONDITIONS.

(A) General. Based on the investigations of the Project Site and other inquiries made by the Design-Builder prior to the Contract Date, which the Design-Builder acknowledges to be sufficient for this purposes, and except with respect to Specified Subsurface Conditions, Differing Geotechnical Conditions, or Regulated Site Conditions~~,~~ which constitute Uncontrollable Circumstances entitling the Design-Builder to relief as and to the extent provided in this Section and Section 9.3 (Uncontrollable Circumstances - Entitlement to Relief), the Design-Builder assumes the risk of all surface and subsurface geotechnical conditions at the Project Site as they may affect the Design-Builder's performance of the Design-Build Work, including the structural suitability of the Project Site or the Design-Builder's excavation or construction costs or schedules, and agrees that any such subsurface geotechnical condition revealed during the Design-Build Work which has such an affect shall not constitute an Uncontrollable Circumstance.

(B) Design-Builder Obligations with Respect to Specified Subsurface Conditions and Regulated Site Conditions. The Design-Builder represents and warrants that, as of the Contract Date, it has no knowledge of any Specified Subsurface Condition or Regulated Site Condition other than those disclosed by the Owner or discovered by the Design-Builder and disclosed to the Owner prior to the Contract Date. In performing the Design-Build Work, the

Design-Builder shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Specified Subsurface Condition or Regulated Site Condition after the location and existence of such condition has been disclosed to the Design-Builder, or becomes actually known by the Design-Builder through physical observation (including any such observation made during excavations). Upon encountering a Specified Subsurface Condition or Regulated Site Condition, the Design-Builder shall provide prompt written notice to the Owner of such condition, which notice shall not be later than five days after such condition is first known to the Design-Builder. The Design-Builder shall, to the extent reasonably possible, provide such notice before the Specified Subsurface Condition or Regulated Site Condition has been disturbed or altered. Except for the Design-Builder's failure to provide such notice and exercise due care with respect to such disclosed or known Specified Subsurface Condition or Regulated Site Condition, the Design-Builder shall not be responsible for any Specified Subsurface Condition or Regulated Site Condition and shall be entitled to Uncontrollable Circumstance relief in connection therewith in accordance with and to the extent provided in Section 9.3 (Uncontrollable Circumstances - Entitlement to Relief). The parties acknowledge and agree, however, that Regulated Site Conditions shall not include any condition involving Regulated Substances used, stored or otherwise brought to the Project Site by the Design-Builder or any Subcontractor. The Design-Builder shall comply, and shall cause all Subcontractors to comply, with the Contract Standards in using or storing any Regulated Substances on the Project Site, and shall assume all risks associated with such activities and indemnify, defend and hold harmless the Owner Indemnitees in accordance with and to the extent provided in Section 9.5 (Indemnification by the Design-Builder) from and against all Loss-and-Expense resulting therefrom.

(C) Owner Obligations with Respect to Specified Subsurface Conditions and Regulated Site Conditions. If at any time a Specified Subsurface Condition or Regulated Site Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Design-Build Work, or (3) increases the cost to the Design-Builder of performing the Design-Build Work, then the Owner shall promptly, after written notice from any Governmental Body or the Design-Builder of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary under Good Engineering and Construction Practice to dispose of, remediate or otherwise correct the Specified Subsurface Condition or Regulated Site Condition or otherwise make the Specified Subsurface Condition or Regulated Site Condition comply with Applicable Law and to negotiate a Change Order to reflect the appropriate increase to the Design-Build Price in light of such discovery. The Owner shall have the right to contest any determination of a Specified Subsurface Condition or Regulated Site Condition and shall not be required to take any action under this subsection so long as: (i) the Owner is contesting any determination of a Specified Subsurface Condition or Regulated

Site Condition in good faith by appropriate proceedings conducted with due diligence; and (ii) with respect to Specified Subsurface Conditions or Regulated Site Conditions, Applicable Law permits continued design or construction of the Design-Build Improvements pending resolution of the contest, so that the Design-Builder shall have no liability as a result of the failure of the Owner to dispose of, remediate or otherwise correct such Specified Subsurface Condition or Regulated Site Condition during the period of contest. Notwithstanding any of the foregoing, the Owner shall have no obligation to take any action pursuant to this subsection with respect to any Specified Subsurface Condition as long as the Design-Builder is able to continue to perform the Design-Build Work in accordance with Applicable Law and the Owner provides the Design-Builder with appropriate price, performance or schedule relief to the extent necessary to address the Specified Subsurface Condition in accordance with Section 9.3 (Uncontrollable Circumstances - Entitlement to Relief).

(D) Differing Geotechnical Conditions. The parties acknowledge that the Fixed Design-Build Price was formulated based upon the subsurface conditions set forth in the Geotechnical Baseline Report. Prior to the Construction Date, the Design-Builder shall undertake its own independent geotechnical investigation in accordance with Appendix 2 (Design and Construction Requirements) and shall promptly notify the Owner of any Differing Geotechnical Conditions discovered as a result of such testing. The Design-Builder shall be entitled to relief in accordance with Section 9.3 (Uncontrollable Circumstances - Entitlement to Relief) with respect to any such Differing Geotechnical Conditions discovered by the Design-Builder's pre-Construction Date geotechnical investigation. On and after the Construction Date, the Design-Builder shall not be entitled to any such relief if it encounters unexpected surface or subsurface conditions at the Project Site except for Specified Subsurface Conditions or Regulated Site Conditions, regardless of the adverse affect such discovery may have on the Design-Builder.

(E) Protection of Underground Utilities. Prior to conducting any excavation or trenching, the Design-Builder shall contact the appropriate regional notification center as required by California Government Code Sections 4216 – 4216.9. The Design-Builder shall use due care, in accordance with Good Engineering and Construction Practice, to protect all underground Utilities at the Project Site from damage or destruction.

SECTION 3.5. ENVIRONMENTAL REVIEW.

A certified environmental impact report with respect to the Project will be prepared by the lead agency for the Project under the California Environmental Quality Act. The environmental impact report will require specific Environmental Mitigation Measures to be completed in connection with the Project. The Environmental Mitigation Measures shall constitute part of the Design and Construction Requirements, which the Design-Builder is obligated to carry out and comply with hereunder. Upon issuance of the final Environmental

Mitigation Measures for the Project, a Change Order will be issued to address, to the extent necessary, any differences between the final Environmental Mitigation Measures and the mitigation measures identified as a Reference Document.

SECTION 3.6. DESIGN-BUILD WORK PERMITTING RESPONSIBILITIES.

(A) Generally. The Design-Builder shall make all filings, applications and reports and take all other action necessary to obtain and maintain, and shall obtain and maintain, all Governmental Approvals (except for those Governmental Approvals that are the responsibility of the Owner, as set forth in Appendix 3 (Governmental Approvals)) necessary to commence, continue and complete the Design-Build Work and achieve Acceptance, and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law or requested by the Owner in its discretion, Governmental Approvals shall be obtained in the name of the Owner, name the Owner as a co-permittee or recognize the Owner as beneficiary of the Governmental Approval, and in connection therewith, the Design-Builder shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions thereof; (4) attend all required meetings and hearings and, at the request of the Owner, assume the lead role in handling any such meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms thereof. All permit and filing fees required in order to obtain and maintain the Governmental Approvals (other than Governmental Approvals required as a result of an Uncontrollable Circumstance or to be obtained by the Owner pursuant to Appendix 3 (Governmental Approvals)), shall be paid by the Design-Builder, regardless of the identity of the applicant or permittee. The Design-Builder shall not disadvantage the Owner in any application, data submittal or other communication with any Governmental Body regarding any Governmental Approval. The Owner shall have the right to attend any proceedings associated with a Governmental Approval. The final terms and conditions of any Governmental Approval to be obtained and maintained by the Design-Builder shall be subject to the Owner's approval, which approval shall not be unreasonably withheld or delayed.

(B) Data and Information. All data, information and action required to be supplied or taken by the Design-Builder in connection with the Governmental Approvals shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the Owner as the legal and beneficial owner of the Design-Build Improvements. The data and information supplied by the Design-Builder to the Owner and all Governmental Bodies in connection therewith shall be correct and complete in all material respects, and shall be submitted in draft form to the Owner at least five Business Days prior to submitting such data and information to the applicable Governmental Body to allow full and meaningful review and comment

by the Owner. The Design-Builder shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information.

(C) Non-Compliance and Enforcement. The Design-Builder shall report to the Owner and, as appropriate, other Governmental Bodies, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval, Environmental Mitigation Measures or Applicable Law pertaining to the Design-Build Improvements. Any unexcused non-compliance with regulatory standards imposed by Governmental Approvals, Environmental Mitigation Measures or Applicable Law shall constitute a breach of this Design-Build Agreement and may be enforced as such by the Owner irrespective of any regulatory enforcement inaction or action by any Governmental Body.

(D) Reports to Governmental Bodies. The Design-Builder shall prepare all reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals, Environmental Mitigation Measures and under Applicable Law with respect to the Design-Build Work. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the Owner, if such are acceptable to the Governmental Body. The Design-Builder first shall provide the Owner with copies of such regulatory reports for review, comment and signature, as applicable, at least five Business Days before their filing with the Governmental Body, and then with the Governmental Body; provided, however, that if Applicable Law requires immediate filing with the Governmental Body, the Design-Builder shall provide such copies to the Owner concurrently with the filing with the Governmental Body. The Design-Builder shall certify to the Owner the accuracy and completeness of all reports, submittals, data and other information proposed for filing.

(E) Potential Regulatory Change. The Design-Builder shall keep the Owner regularly advised as to potential changes in regulatory requirements affecting the Design-Build Work of which the Design-Builder has knowledge, and shall provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the Owner should a Change in Law actually occur.

(F) Assistance to the Owner. The Design-Builder, at its cost and expense, shall cooperate with and assist the Owner in obtaining and maintaining all Governmental Approvals that are the responsibility of the Owner, as set forth in Appendix 3 (Governmental Approvals). Such cooperation and assistance shall include compliance with any specific requirements set forth in Appendix 3 (Governmental Approvals) and providing to the Owner and all appropriate Governmental Bodies all data, information, plans and documentation that are within its possession or control (including all information specific to the Design-Build Work that may exist or be required by such Governmental Bodies to be

developed), which may be required in order to properly apply for, obtain and maintain such Governmental Approvals. All such data, information, plans and documentation shall be correct and complete in all material respects and, as applicable, shall be developed by the Design-Builder in accordance with the Contract Standards.

(G) Limited Permitting Assistance by the Owner. The Owner shall provide reasonable assistance to the Design-Builder in connection with the Design-Builder's obligation to obtain and maintain the Governmental Approvals required to be obtained by the Design-Builder under this Section, including signing permit applications, attending public hearings as necessary and meetings of the Governmental Bodies charged with issuing the Governmental Approvals, and providing the Design-Builder with existing relevant data and documents that are within the Owner's custody or control or are reasonably obtainable by the Owner and which are reasonably required for such purpose; provided, however, that the Owner's obligation to provide such reasonable assistance shall be limited, in light of the Design-Builder's primary role in the permitting and development of the Design-Build Improvements, only to those actions which are legally required to be taken by the Owner as permittee or co-permittee or which involve providing information which is in the possession of or reasonably obtainable by the Owner. Any such assistance shall be provided only upon the reasonable request of the Design-Builder made directly to the Owner, and the Owner shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the Owner to staff the Design-Builder's permitting or development efforts, to undertake any new studies or investigations with respect to the Design-Build Improvements, or to affirmatively seek to obtain the issuance of the Governmental Approvals required to be obtained by the Design-Builder pursuant to this Section.

(H) Design-Builder Assumption of Permitting Risk for Design-Build Work; Limitations. The Design-Builder explicitly assumes the risk of obtaining and maintaining the Governmental Approvals required to be obtained by the Design-Builder pursuant to this Section, including the risk of delay, non-issuance or the imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Design-Builder shall be afforded relief from the assumption of such risk (1) upon the occurrence of any Change in Law described in items (a) or (b) of such defined term, and (2) with respect to all Governmental Approvals other than the New Domestic Water Supply Permit which permit is addressed in subsection 4.2(D) (Design-Builder Assumption of Risk), to the extent provided under subsections (I) and (J) of this Section. In assuming this risk, the Design-Builder acknowledges in particular that (except as otherwise specifically provided in this Section) the delay or non-issuance of any Governmental Approval required for the commencement of construction will have the effect of compressing the period within which the completion of construction, testing and all other Design-Build Work must be completed hereunder in order to avoid delay liquidated damages pursuant to Section 4.5 (Scheduled Acceptance Date and Delay Liquidated Damages) and

termination pursuant to Article 8 (Breach, Default, Remedies, and Termination). The Design-Builder further acknowledges that a Governmental Body, in issuing any Governmental Approval, may impose terms and conditions which require the Design-Builder to make changes or additions to the Design-Build Work which may increase the cost, time or risk to the Design-Builder of performing the Design-Build Work, all of which costs, delays or risks shall be for the account of and borne by the Design-Builder (except as otherwise specifically provided in this Section). Any such terms and conditions that impose requirements that are different from or that are in addition to those imposed by the Design and Construction Requirements and that are within the discretion of such Governmental Body without a formal change of regulation or law shall not constitute a Change in Law, and any changes to the Design-Build Work resulting therefrom shall be subject to review and approval by the Owner, acting reasonably. The Design-Builder shall promptly inform the Owner of any unreasonable request or requirement imposed by any Governmental Body. The Owner will use good faith efforts to work with the Design-Builder to persuade the Governmental Body to change any unreasonable request or requirement imposed by Governmental Body identified by the Design-Builder and agreed upon as unreasonable by the Owner.

(I) Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations. If in seeking to obtain a Governmental Approval set forth in subsection (J) of this Section other than the New Domestic Water Supply Permit, (1) the Design-Builder has complied with the requirements of this Design-Build Agreement; (2) the Design-Builder has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval; (3) the Design-Builder has in all respects used its best efforts to obtain the Governmental Approval; (4) the Design-Builder has consistently maintained a fully responsive, engaged relationship with the staff of the Governmental Body in a manner that is recognized as necessary to securing similar permits in a timely manner in light of the discretion accorded Governmental Bodies under administrative law; and (5) there has been a failure to issue a Governmental Approval by the Assumed Approval Issuance Date set forth in Table 3-6 below, then the Design-Builder shall be entitled to an adjustment to the Scheduled Acceptance Date and (i) if the Construction Date is delayed as a result of such permitting delay, the Construction Component Price shall continue to escalate, or (ii) if the Construction Date has already occurred, the Design-Builder shall be permitted to recover incremental daily general condition costs to the extent provided in subsection (J) of this Section. Notwithstanding the above, the Design-Builder shall not be entitled to an adjustment to the Scheduled Acceptance Date or additional cost recovery if the failure or delay in obtaining any Governmental Approval is the result of the quality, timeliness, or completeness of the submittal application or of the nature of the design or approach reflected in such submittals.

(J) Assumed Approval Issuance Dates. The Design-Builder shall submit completed applications for each of the Governmental Approvals listed below in Table 3-6 by the applicable "Governmental Approval Application Submission Date", stated in Table 3-6 as the number of days following the Contract Date. The "Assumed Approval Issuance Date" is the date by which the applicable Governmental Approval is expected to be obtained, as measured from the Application Submission Date and assuming completed application submittals in accordance with Applicable Law and the adopted administrative practice of the applicable Governmental Body by the applicable Governmental Approval Application Submission Date. The Scheduled Acceptance Date shall be adjusted to account for the number of days of delay by a Governmental Body in issuing any required Governmental Approval listed below in Table 3-6 beyond the Assumed Approval Issuance Date, reduced by (1) the number of days of Design-Builder delay in submitting a complete application in accordance with this Section beyond the applicable Governmental Approval Application Submission Date, and (2) the number of days of any Governmental Body delay in issuing the required Governmental Approval due to the failure of the Design-Builder to exercise reasonable diligence in accordance with this Section in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually causes delay in the Design-Builder's critical path completion schedule after the exercise of all reasonable mitigation efforts by the Design-Builder. In addition, if the permitting delay is subsequent to the Construction Date, the Design-Builder shall be entitled to an adjustment of the Fixed Design-Build Price equal to the Design-Builder's reasonable daily general conditions costs, subject to Cost Substantiation in accordance with Section 11.9 (Cost Substantiation) unless a lump sum price is negotiated between the Owner and the Design-Builder, for the number of days of delay caused by the applicable Governmental Body, as calculated in accordance with this subsection. The Design-Builder shall bear the burden of proving any claim of entitlement to an adjustment under this Section. Except as specifically provided for in this Section, no delay by a Governmental Body in issuing a required Governmental Approval shall entitle the Design-Builder to any price adjustment, schedule relief or any other relief from its performance obligations hereunder. This subsection (J) does not apply to delays in obtaining the New Domestic Water Supply Permit which permit is addressed in subsection 4.2(D) (Design-Builder Assumption of Risk). The Design-Builder shall promptly and regularly inform the Owner as matters arise which may culminate in any such claim in order to permit timely intervention by the Owner should it so elect.

Table 3-6

Governmental Approval	Issuing Agency	Governmental Approval Application Submission Date (Number of days from Contract Date)	Assumed Approval Issuance Date (Number of days following Date of Application Submittal)
General Construction Stormwater Permit	Regional Water Quality Control Board	February 15, 2015 (422 days)	March 16, 2015 (30 days)
Title 27 Permit	Regional Water Quality Control Board	May 11, 2015 (507 days)	October 29, 2015 (120 days)
Waste Discharge Permit	Regional Water Quality Control Board	February 15, 2015 (422 days)	March 16, 2015 (30 days)
NPDES - storm water discharge	Regional Water Quality Control Board	February 15, 2015 (422 days)	March 16, 2015 (30 days)
Permit to operate a public water system	CDPH	August 18, 2016 (625 days)	October 29, 2017 (437 days)
Combined Development Permit	Monterey County	March 17, 2015 (452 days)	June 14, 2015 (90 days)
Grading Permit	Monterey County	March 17, 2015 (452 days)	May 15, 2015 (60 days)
Erosion Permit	Monterey County	March 7, 2015 (442 days)	June 4, 2015 (90 days)
Use Permit	Monterey County	March 17, 2015 (452 days)	June 14, 2015 (90 days)
Permit to Construct	Monterey County	March 27, 2015 (462 days)	May 25, 2015 (60 days)
Tree Removal	Monterey County	March 27, 2015 (462 days)	May 25, 2015 (60 days)
Authority to Construct	Monterey Bay Unified Air Pollution Control District	September 25, 2015 (644 days)	November 23, 2015 (60 days)

Governmental Approval	Issuing Agency	Governmental Approval Application Submission Date (Number of days from Contract Date)	Assumed Approval Issuance Date (Number of days following Date of Application Submittal)
Permit to Operate	Monterey Bay Unified Air Pollution Control District	January 12, 2017 (1119 days)	January 13, 2017 (1 day)

~~[Note: Table to be completed based on information provided in Proposal Form 23]~~

SECTION 3.7. APPROVED TECHNOLOGY AND PILOT TESTING.

The Design-Builder shall be responsible for using technology approved by CDPH for sea water treatment and for performing any testing required by any Governmental Body in connection with any Governmental Approval at its sole cost and expense. The Design-Builder specifically bears all risk associated with any requirements imposed by a Governmental Body with respect to technology and with respect to testing. The Design-Builder shall not be entitled to rely on, and the Owner shall have no liability with respect to, any testing data produced by the Owner prior to the Contract Date.

SECTION 3.8. CDPH REQUIREMENTS.

The parties acknowledge that a New Domestic Water Supply Permit is not required under Applicable Law to commence and complete the Design-Build Work, but that obtaining the New Domestic Water Supply Permit is a requirement before Finished Water produced through the use of the Design-Build Improvements can be supplied to the Owner's customers and must be obtained in order to achieve Acceptance. The obligations of the parties with respect to obtaining the New Domestic Water Supply Permit are set forth in Section 4.2 (Interim Operations Approval and New Domestic Water Supply Permit). The Design-Builder acknowledges that CDPH intends to provide comments and advice to the Design-Builder concerning the Design-Build Work throughout the Design-Build Period and that such comments and advice are likely to have a bearing on the ability of the parties to obtain the New Domestic Water Supply Permit. Accordingly, the Design-Builder shall cooperate with CDPH throughout the Design-Build Period and shall provide all reasonably requested information relating to the Design-Build Improvements to CDPH in accordance with Section 3.7 (Approved Technology) and 4.2 (Interim Operations Approval and New Domestic Water Supply Permit) If the Design-Builder believes that a

request is unreasonable, it shall immediately notify the Owner. The Design-Builder explicitly bears the risk of proceeding in contravention of any comments or advice from CDPH, whether such comments or advice rise to the level of Applicable Law or otherwise. The Design-Builder shall assume all risks set forth in subsection 4.2(D) (Design-Builder Assumption of Risk) with respect to the New Domestic Water Supply Permit.

SECTION 3.9. DESIGN-BUILDER DESIGN – GENERAL.

(A) Performance of the Design Work. The Design-Builder agrees to undertake, perform, and complete the designs and plans for the Design-Build Improvements in accordance with the Contract Standards and shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. The Design-Builder shall make all design submittals to the Owner in accordance with this Section and Appendix 6 (Design-Build Work Review Procedures).

(B) Sole Responsibility and Liability. The Design-Builder shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Design-Build Improvements hereunder and the preparation of all plans, specifications, drawings, blueprints and other Design Documents necessary or appropriate to complete the Design Build Work. As of the Contract Date, the Design-Builder's design for the Design-Build Improvements is not complete. All working and final Design Documents proposed by the Design-Builder shall comply with the Design and Construction Requirements set forth in Appendix 2 (Design and Construction Requirements) and shall ensure that the Design-Build Improvements are constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Design and Construction Requirements. The Design-Builder shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Design Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Design Documents.

(C) Owner Review and Comment on Design Documents. The Design-Builder shall provide the Owner with the design submittal protocol in accordance with the specific requirements set forth in Appendix 6 (Design-Build Work Review Procedures). The Owner shall have the right to review and comment on all Design Documents as provided in Appendix 6 (Design-Build Work Review Procedures) in order to confirm the compliance and consistency of the Design Documents with the Design and Construction Requirements and the other Contract Standards. In no event shall the Design-Builder proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol and Appendix 6 (Design-Build Work Review Procedures). The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in Appendix 6 (Design-Build Work Review Procedures), to any

comments delivered by the Owner as to the Design-Builder's design submittals. Neither compliance by the Design-Builder with the Design and Construction Requirements, nor review and comment by the Owner of the Design-Builder's Design Documents, nor any failure or delay by the Owner in commenting on any design submittals shall in any way relieve the Design-Builder of full responsibility for the design, construction, and performance of the Design-Build Improvements in accordance with the Contract Standards.

(D) Owner Interest in the Design and Construction Requirements. The Design-Builder acknowledges the Owner's material interest in each provision of the Design and Construction Requirements and, notwithstanding the Acceptance Standards and Requirements of the Design-Builder and the associated non-performance remedies of the Owner, agrees that no change to the Design and Construction Requirements shall be made except with the consent of the Owner, which may be withheld or conditioned in its discretion. Any such changes shall be evidenced by a Contract Administration Memorandum, Design-Build Agreement Amendment, or Change Order, as applicable. The Owner reserves the right to review and comment upon the final design of the Design-Build Improvements insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Design-Build Improvements is in compliance with Appendices 2 (Design and Construction Requirements) and 4 (General Design-Build Work Requirements) with respect to such matters.

(E) Documents at the Project Site. The Design-Builder shall maintain at the Project Site all design and construction documents, including a complete set of record drawings, in accordance with Appendix 4 (General Design-Build Work Requirements). These documents shall be available to the Owner for reference, copying and use, and a complete set thereof shall be delivered to the Owner upon completion of the Design-Build Work.

(F) Value Engineering. Upon completion of the design to the thirty percent (30%) level, the design will be vetted through a value engineering process as described in Appendix 4 (General Design-Build Work Requirements). The entire value engineering process shall take no longer than 60 days.

SECTION 3.10. CHANGES TO THE DESIGN AND CONSTRUCTION REQUIREMENTS.

(A) Changes Made at Design-Builder Request. The Design-Builder shall give the Owner written notice of, and reasonable opportunity to review and comment upon, any changes to the Design and Construction Requirements proposed to be made at the Design-Builder's request. The notice shall contain sufficient information for the Owner to determine that the change to the Design and Construction Requirements: (1) does not diminish the capacity of the Design-Build Improvements to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of

the Design-Build Improvements; (3) is reasonably necessary or is advantageous for the Design-Builder to fulfill its obligations under this Design-Build Agreement; and (4) is feasible. The Owner shall have the absolute right to accept, reject or modify any proposed Design and Construction Requirements change. Any such proposed Design and Construction Requirements change accepted or modified by the Owner ("Design and Construction Requirement Change"), and any related change in the terms and conditions of this Design-Build Agreement, shall be reflected in a Change Order.

(B) Changes Made Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance prior to the Acceptance Date, the Owner shall promptly proceed, subject to the terms, conditions and procedures set forth in Section 9.3 (Uncontrollable Circumstances - Entitlement to Relief), to issue a Change Order that reflects all Design and Construction Requirement Changes reasonably necessary to address the Uncontrollable Circumstance. The Design-Builder shall consult with the Owner concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Design-Builder and the Owner shall cooperate in order to minimize any delay, lessen any additional cost and modify the Design-Build Improvements so as to permit the Design-Builder to continue providing the Design-Build Work in light of such Uncontrollable Circumstance. The design and construction costs resulting from any such Design and Construction Requirement Change shall be borne by the Owner, except to the extent provided in Section 9.3 (Uncontrollable Circumstances - Entitlement to Relief). Any Design and Construction Requirement Change made on account of Uncontrollable Circumstances and any related change in the terms and conditions of this Design-Build Agreement, shall be reflected in a Change Order.

(C) Changes Required by Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval that require a Design and Construction Requirement Change. If the imposition of any such additional terms and conditions imposed by a Governmental Body, the Owner shall promptly proceed to issue a Change Order that reflects all Design and Construction Requirement Changes reasonably necessary to comply with such additional terms and conditions. Pursuant to and to the extent provided in Section 3.6 (Design-Build Work Permitting Responsibilities) and 4.2 (Interim Operations Approval and New Domestic Water Supply Permit), the Design-Builder shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Accordingly, the design and construction costs resulting from any Design and Construction Requirement Change required under this Section shall be borne by the Design-Builder. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Design-Build Agreement shall be reflected in a Change Order.

(D) Changes Made at Owner Direction. The Owner shall have the right to make Design and Construction Requirement Changes at any time prior to the Acceptance Date at its own discretion for any reason whatsoever, whether and however the exercise of such rights affects this Design-Build Agreement so long as the Design-Builder's rights are protected as provided in subsection (F) of this Section. Except as provided in subsection (C) of this Section, the design and construction costs resulting from any such Design and Construction Requirement Change made at the Owner's direction under this Section shall be borne by the Owner through a Design-Build Price Adjustment. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Design-Build Agreement shall be reflected in a Change Order. The Owner shall have no obligation to make any Design and Construction Requirement Change under this subsection.

(E) Capacity Reduction Election. The Owner shall have the right at any time prior to the Construction Date to elect to reduce the capacity of the Design-Build Improvements in accordance with the Capacity Reduction Modifications set forth in Appendix 2 (Design and Construction Requirements). Upon such an election, the Fixed Design-Build Price will be adjusted in accordance with subsection 5.1(C) (Fixed Design-Build Price Adjustments).

(F) Design-Builder Non-Impairment Rights. No Design and Construction Requirement Change, other than a Design-Builder requested Design and Construction Requirement Change or the Capacity Reduction Modification, shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the ~~Company~~Design-Builder hereunder unless the parties agree to appropriate reasonable price and/or other reasonable adjustments in connection with such Design and Construction Requirement Change. The Design-Builder shall have no right to object to such Design and Construction Requirement Change, however, if the Owner affords the Design-Builder any price, schedule, performance and other relief necessary to avoid any such material effect.

SECTION 3.11. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Applicable Law and Equipment Operating Requirements. In designing, constructing, commissioning, starting up and testing the Design-Build Improvements, the Design-Builder shall comply with Applicable Law, shall construct, commission, and start-up all equipment and systems comprising the Design-Build Improvements, as applicable, in accordance with the Contract Standards and applicable equipment manufacturer's specifications and recommendations, and such other safety requirements set forth in Appendix 4 (General Design-Build Work Requirements).

(B) Registration, Licensing and Certification Requirements. The Design-Builder shall ensure that all persons performing Design-Build Work,

including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body and Applicable Law.

(C) Compliance with Conditions in Governmental Approvals. The Design-Builder shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the continuance of the Design-Build Work.

(D) Governmental Approvals Necessary for Continued Construction. The Design-Builder shall make all necessary filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the continuance of the Design-Build Work after it has commenced. The Owner, subject to the limitations set forth in subsection 3.6(G) (Limited Permitting Assistance by the Owner), shall assist and cooperate with the Design-Builder in connection with the foregoing undertaking.

(E) Prevailing Wages and Labor Compliance Program. The Design-Builder shall pay prevailing wage rates. The general prevailing wage rates for the Design-Build Work are available on the California Department of Industrial Relations' website at http://www.dir.ca.gov, copies of which are on file at the offices of Owner and are available to the Design-Builder or any interested party upon request. Pursuant to Public Resources Code section 75075 and Labor Code section 1771.5(b), the Design-Build Work is subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements. The Design-Builder shall, at no additional cost to Owner, comply with labor compliance program requirements. The Design-Builder is responsible for all failures by Subcontractors to comply with labor compliance program requirements. Pursuant to section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Design-Build Work is to be done have been determined by the Director of the California Department of Industrial Relations.

(F) CWSRF Funding Responsibilities.

(1) Application and Submittals. The Owner shall submit all filings, applications and reports necessary to obtain reimbursement from the CWSRF for the Design-Build Improvements.

(2) Design-Builder Responsibilities. The Design-Builder shall be responsible for cooperating with and providing reasonable assistance to the Owner in all activities related to the CWSRF Loan Agreement including:

(a) coordinating with the Owner or the Owner's consultant on the schedule and content of the submittals required for the CWSRF program;

(b) assisting the Owner or the Owner's consultant in developing and furnishing all necessary and reasonably required supporting material;

(c) supplying all data and information which may be reasonably required;

(d) familiarizing itself with the terms and conditions of the CWSRF program relating to construction activities and practices;

(e) complying with the terms and conditions of the CWSRF Loan Agreement or other financing document required by the CWSRF program or by Applicable Law with respect to construction activities and practices;

(f) preparing all plans associated with the Project required by the CWSRF Loan Agreement and the applicable regulations of the CWSRF program;

(g) attending meetings, as necessary, with State Water Resources Control Board and other Governmental Bodies; and

(h) taking all other action reasonably requested by the Owner in order to assist and support the Owner related to the CWSRF financing for the Design-Build Improvements.

The Design-Builder shall take all reasonable actions necessary to comply with the conditions to disbursement of proceeds of the CWSRF Loan Agreement and to maximize the Owner's eligibility to receive timely reimbursement under the CWSRF Loan Agreement.

(3) Data and Information. All data, information and action required to be supplied or taken in connection with any CWSRF financing shall be supplied and taken on a timely basis considering the CWSRF requirements at the Design-Builder's sole cost and expense. The data and information supplied by the Design-Builder to the Owner or the Owner's consultant and the State Water Resources Control Board in connection therewith shall be correct and complete in all material respects and shall be submitted in draft form to the Owner or the Owner's consultant sufficiently in advance to allow full and meaningful review and comment by the Owner. The Design-Builder shall not be entitled to any schedule or price relief or escalation which result from a delay due to the submission of materially incorrect or incomplete information. The Owner reserves the

right to reject, modify, alter, amend, delete or supplement any information supplied by the Design-Builder pursuant to this Section.

(4) Design Packages. The Design-Builder shall be responsible for preparing design packages pursuant to the requirements of the State Water Resources Control Board, and in accordance with Appendix 6 (Design-Build Work Review Procedures), in connection with any application for obtaining reimbursement for the Design-Build Improvements under the CWSRF Loan Agreement. The design packages shall include, but not be limited to, all plans, drawings, mapping, inspections, models, studies, reports, analyses and cost estimates required by the State Water Resources Control Board.

(5) CWSRF Requirements. In performing its CWSRF-related responsibilities as set forth herein, the Design-Builder shall do so in a manner which complies with all CWSRF program requirements. The Owner will make filings to the State Water Resources Control Board. All CWSRF related submittals to be prepared by the Design-Builder as set forth herein shall be delivered to the Owner or the Owner's consultant for its review and comment.

(G) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, if the Design-Builder or any Subcontractor fails at any time to comply with Applicable Law with respect to the Design-Build Work, the Design-Builder shall: (1) immediately correct such failure and resume compliance with Applicable Law; (2) pay any resulting fines, assessments, levies, impositions, penalties or other charges; (3) indemnify, defend and hold harmless the Owner Indemnitees in accordance with Section 9.5 (Indemnification by the Design-Builder) from any Loss-and-Expense resulting therefrom; (4) make all changes in performing the Design-Build Work which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Design-Builder to comply with Applicable Law.

SECTION 3.12. CONSTRUCTION PRACTICE.

The Design-Builder shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Design-Build Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Design-Builder to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and

housekeeping of the Project Site; construction trade management; temporary parking (beyond any parking provided by the Owner); vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Site; telecommunications, temporary utilities; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; snow removal and construction coordination. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Improvements shall be new, of recent manufacture, and of good quality.

SECTION 3.13. ENGAGEMENT OF OWNER'S REPRESENTATIVE.

(A) Duties. The Design-Builder shall fully cooperate with any Owner's Representative in connection with the administration of this Design-Build Agreement and the performance of the duties of the Owner's Representative hereunder. One of the Owner's Representatives shall be the Resident Project Representative as defined in subsection 6.6.7 of Appendix 6 (Design-Build Work Review Procedures). In the performance of such services, the Design-Builder agrees that the Owner's Representative may, without limiting other possible services to the Owner: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the Design-Build Work; review proposed changes to the Design and Construction Requirements; review plans, drawings and specifications of the Design-Build Improvements for compliance with the Design and Construction Requirements; monitor the Acceptance Tests undertaken by the Design-Builder and review the Design-Builder's certified Acceptance Test report to determine whether the Acceptance Standards and Requirements have been satisfied pursuant to Article 4 (Acceptance of the Design-Build Improvements) and Appendix 7 (Acceptance Test Procedures and Requirements); review the validity of the Design-Builder's written notice that an Uncontrollable Circumstance has occurred; and provide certificates and perform such other duties as may be specifically conferred on the Owner's Representative hereunder. It is understood that the services intended to be provided by the Owner's Representative shall be of an observational and review nature only, and that the Owner's Representative shall not have authority to interfere with, halt or delay in any way the construction of the Design-Build Improvements or to require or approve changes to the Design and Construction Requirements or the Design-Builder's plans and specifications made in accordance therewith. Notwithstanding the above, the Owner's Representative shall be permitted to stop work if a safety or other emergency concern arises.

(B) Role and Communications. The parties acknowledge that no decision of the Owner's Representative shall be binding upon the Owner except upon confirmation in writing by the Owner's Contract Administrator.

(C) Fees and Expenses. Any fees and expenses of the Owner's Representative shall be paid by the Owner.

SECTION 3.14. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observation and Design Review Program. During the progress of the Design-Build Work through Final Completion, the Design-Builder shall at all times afford the Owner, Owner's Representative and appropriate Governmental Bodies every reasonable opportunity for observing all Design-Build Work, and shall comply with the Design-Build Work review procedures set forth in Appendix 6 (Design-Build Work Review Procedures) and the Design-Build Quality Management Plan. The Design-Builder shall use its best efforts to provide Owner, Owner's Representative, and Governmental Body employees with safe access to the Design-Build Work. During any such observation, all representatives of the Owner and the Owner's Representative shall comply with the Design-Builder's site-specific health and safety plan for the Design-Build Work applicable to areas visited, and shall in no material way interfere with the Design-Builder's performance of any Design-Build Work.

(B) Design-Builder Tests and Inspections. The Design-Builder shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Design-Builder shall give the Owner and the Owner's Representative reasonable advance notice (at least 10 Business Days, unless waived or shortened by the Owner) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of the Owner or the Owner's Representative at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design-Build Work. The Design-Builder shall engage an Engineer (or, as appropriate, architect licensed in the State and acceptable to the Owner) at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction and shall be subject to the approval of the Owner, which approval shall not be unreasonably withheld. In addition to the foregoing, Acceptance Testing of the performance of the completed Design-Build Improvements shall be conducted in accordance with Article 4 (Acceptance of the Design-Build Improvements) and Appendix 7 (Acceptance Test Procedures and Requirements).

(C) Owner Tests, Observations and Inspections. The Owner and the Owner's Representative, and their respective employees, agents, representatives and contractors (which may be selected in their discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests, as the Owner deems necessary or desirable to ascertain whether the Design-Build Work

complies with this Design-Build Agreement. Such observations, inspections and tests may be conducted on-site or anywhere off-site, and may include factory inspections of piping and equipment. The costs of such test, observation or inspection shall be borne by the Owner unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Design-Build Agreement or Applicable Law, in which event the Design-Builder shall bear all reasonable costs and expenses of such observation, inspection or test. If any requested test, observation or inspection causes a material delay in the construction schedule, the Scheduled Acceptance Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Design-Builder shall secure and deliver to the Owner promptly, at the Design-Builder's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract Standards. The Design-Builder shall provide to the Owner, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Design-Builder under or in connection with any Governmental Approval, Subcontract or Security Instrument pertaining to the Design-Build Period.

(E) Notice of Covering Design-Build Work. The Design-Builder shall give the Owner and the Owner's Representative notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five Business Days) before such covering and completion. The Owner shall give the Design-Builder reasonable notice (a minimum of 72 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the Owner and the Owner's Representative a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the Owner's written request, the Design-Builder shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the Owner's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the Owner as to whether the disputed Design-Build Work complies with the requirements of this Design-Build Agreement. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) by the Design-Builder, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which the Owner was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

(2) in all other cases, as follows:

(a) by the Design-Builder, if such observation or test reveals that the Design-Build Work does not comply with this Design-Build Agreement; or

(b) by the Owner, if such observation or test reveals that the Design-Build Work complies with this Design-Build Agreement.

If such Design-Build Work does comply with this Design-Build Agreement, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be borne by the Owner (through and only through a Design-Build Price Adjustment).

(F) Meetings and Design-Build Work Review. During the Design-Build Period, the Design-Builder and the Owner shall conduct periodic meetings in accordance with this Section and Appendix 4 (General Design-Build Work Requirements). The Design-Builder, the Owner and the Owner's Representative shall conduct management meetings on at least a monthly basis, and shall conduct construction progress meetings on a weekly basis as set forth in Appendix 4 (General Design-Build Work Requirements). Such meeting shall take place in a field office or other suitable location at the Project Site to be provided by the Design-Builder. Representatives of any Governmental Bodies having lawful jurisdiction shall be permitted to attend and participate in all such meetings. At such meetings, discussions will be held concerning all aspects of the design, construction and testing of the Design-Build Improvements including, but not limited to, construction schedule, progress payments, Design and Construction Requirement Changes, shop drawings, progress photographs, and any soil boring data and shop test results. A monthly progress report containing all relevant information as required by subsection 3.1(D) (Schedule and Reports) and Appendix 4 (General Design-Build Work Requirements), shall be prepared by the Design-Builder and provided to the Owner and the Engineer at least five days prior to each monthly meeting. The Construction Superintendent or a Senior Supervisor, as appropriate, shall attend a meeting with the Governance Committee at least once per month.

SECTION 3.15. CORRECTION OF DESIGN-BUILD WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Design-Builder shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work which does not conform with the Contract Standards. If the Design-Builder fails to complete, repair, replace, restore, re-perform, rebuild or correct promptly any such Design-Build Work, the Owner shall give to the Design-Builder written notice of the need to correct such non-conforming Design-Build Work. The Design-Builder shall have the right to object to the Owner's determination within

five days of receipt of the Owner notice, and either party may elect to initiate dispute resolution procedures in accordance with Article 7. Notwithstanding the Design-Builder's right of objection, upon receipt of Owner notice pursuant to this subsection, the Design-Builder shall, without being deemed to have waived such objection, at its cost and expense, complete, repair, replace, restore, re-perform, rebuild and correct promptly the non-conforming Design-Build Work. The failure of the Design-Builder to do so shall constitute Design-Builder Fault under the terms of this Design-Build Agreement.

(B) Costs of Correction. The costs of correcting rejected or omitted Design-Build Work shall be borne by the Design-Builder. If it is determined by the parties or through dispute resolution pursuant to Section 8.12 (Non-Binding Dispute Resolution Procedures) that the corrective action was not necessary to conform the Design-Build Work with the requirements of this Design-Build Agreement, the Owner shall reimburse the Design-Builder for its costs and expenses incurred in correcting the Design-Build Work, subject to Cost Substantiation, and the Scheduled Acceptance Date shall be extended to reflect delays caused by such corrective work.

(C) Election to Accept Non-Conforming Design-Build Work. The Owner may elect by Change Order, at the Design-Builder's request, to accept non-conforming Design-Build Work and charge the Design-Builder (through a Design-Build Price Adjustment) for the amount agreed upon by the parties by which the value of the Design-Builder's services or Design-Build Work has been reduced.

(D) Relation to Other Obligations. The obligations specified in this Section establish only the Design-Builder's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Design-Builder under this Design-Build Agreement. This Section is intended to supplement (and not to limit) the Design-Builder's obligations under the Acceptance Standards and Requirements and any other provisions of this Design-Build Agreement or Applicable Law.

SECTION 3.16. DELIVERABLE MATERIAL.

(A) Generally. As the Design-Build Work progresses (or upon the termination of the Design-Builder's right to perform the Design-Build Work), the Design-Builder shall deliver to the Owner all Deliverable Material. The provisions of Section 11.6 (Property Rights) shall apply to any Deliverable Material used by the Design-Builder in the Design-Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. Deliverable Material provided to the Owner shall be the property of the Owner, and the Owner shall have the right to use, reuse, reproduce, publish, display, broadcast and distribute the Deliverable Material and to prepare derivative and additional documents or works based on the Deliverable Material without further

compensation to the Design-Builder or any other party. The Owner shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by the Owner in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. The Owner's use of any such Deliverable Material for any purpose other than the Design-Build Improvements shall be at its own risk and the Design-Builder shall have no liability therefor. For Deliverable Material provided to the Owner in paper format, upon request by the Owner, the Design-Builder agrees to provide the Deliverable Material to the Owner in an appropriate, usable and editable electronic format (e.g., Word file, Excel spreadsheet, AutoCAD file).

(B) Use of Electronic Files. The electronic files containing design plans and drawings and reports that contain the Engineer's licensed professional stamp may only be used in connection with the Project. Such files shall not be re-used by the Owner in connection with any unrelated project, and any unrelated re-use of such files by the Owner shall be without liability to the Design-Builder. The hard copy of the stamped final report and design plans and drawings shall take precedence over the electronic files containing such report and design plans and drawings. The Design-Builder will not have any liability to the Owner resulting from discrepancies between such electronic files and such stamped hard copy documents if: (i) the Owner or an agent of the Owner alters such electronic files without the Design-Builder's express written consent; or (ii) such electronic files have deteriorated The Engineer shall not include any professional seals, signatures, or stamps on any electronic files unless the state that has jurisdiction over such professional services permits such inclusion. Unless the Owner specifies its hardware and software compatibility requirements, it shall be the Owner's responsibility to determine the compatibility of the electronic media used by the Design-Builder with the Owner's software and hardware.

SECTION 3.17. PERSONNEL.

(A) Personnel Performance. The Design-Builder shall enforce discipline and good order at all times among the Design-Builder's employees and all Subcontractors. All persons engaged by the Design-Builder for Design-Build Work shall have requisite skills for the tasks assigned. The Design-Builder shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. All firms and personnel performing Design-Build Work, including Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Construction Superintendent. The Design-Builder shall designate an employee of the Design-Builder, any Affiliate of the Design-Builder, or the Design-Builder's construction manager (the "Construction Superintendent"), who shall be present on the Project Site with any necessary

assistants on a full-time basis when the Design-Builder or any Subcontractor is performing the Design-Build Work. The Construction Superintendent shall, among other things:

(1) be familiar with the Design-Build Work and all requirements of this Design-Build Agreement;

(2) coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision;

(3) maintain a daily status log of the Design-Build Work; and

(4) attend all construction progress meetings with the Owner and the Owner's Representative.

The Design-Builder may change the person assigned as Construction Superintendent, subject to the provisions of subsection (C) of this Section.

(C) Owner Rights with Respect to Key Design-Build Work Personnel. The Design-Builder acknowledges that the identity of the key Design-Build Work management and supervisory personnel proposed by the Design-Builder and its Subcontractors identified in Appendix 10 (Key Personnel and Approved Subcontractors) was a material factor in the selection of the Design-Builder to perform this Design-Build Agreement. Such personnel and their affiliations are set forth in Appendix 10 (Key Personnel and Approved Subcontractors). The Design-Builder shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the Design-Builder or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement or resignation. If any such permissible unavailability occurs, the Design-Builder shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to the Owner for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

(D) Labor Disputes. The Design-Builder shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Design-Builder shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Design-Builder or its Subcontractors, whether pertaining to organization of the Design-Build Work, arrangement or subdivision of the Design and Construction Requirements, employee hiring, or any other matters. The Owner shall have no responsibility whatsoever for any such disputes or issues and the Design-Builder shall indemnify, defend and hold harmless the Owner Indemnitees in accordance with

Section 9.5 (Indemnification by the Design-Builder) from any and all Loss-and-Expense resulting from any such labor dispute.

SECTION 3.18. WARRANTIES AND MAINTENANCE CONTRACTS.

The Design-Builder shall, for the protection of the Owner, obtain from all Subcontractors, vendors, suppliers and other persons from which the Design-Builder procures structures, improvements, fixtures, machinery, equipment, and materials to be incorporated in the Design-Build Improvements such warranties and guarantees as are normally provided with respect thereto as well as those that are specifically required in Appendix 2 (Design and Construction Requirements) and by the Contract Standards, each of which shall be assigned to the Owner to the full extent of the terms thereof. No such warranty shall relieve the Design-Builder of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Design-Build Price or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to an Uncontrollable Circumstance. In addition, the Design-Builder shall obtain maintenance contracts on behalf of the Owner for specified equipment as specified in Appendix 2 (Design and Construction Requirements).

SECTION 3.19. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. "Substantial Completion" shall occur only when all of the following conditions have been satisfied, unless waived in writing by the Owner:

(1) the Design-Builder has submitted and the Owner has approved in writing, such approval not to be unreasonably withheld, a certification by the Design-Builder that construction of the Design-Build Improvements is physically complete and all other Design-Build Work pertaining to the Design-Build Improvements, except the Acceptance Tests and the items on the Final Punch List, is complete and in all respects is in compliance with this Design-Build Agreement;

(2) a preliminary or temporary certificate of occupancy has been issued for the Design-Build Improvements, if required by Applicable Law;

(3) the authority to operate the Design-Build Improvements contained in the Governmental Approvals is in full force and effect and has not been withdrawn, revoked, superseded, suspended or materially impaired or amended;

(4) the Design-Build Improvements are authorized, on a temporary or permanent basis, to be operated under Applicable Law;

(5) the Design-Builder has delivered to the Owner a red-lined set of construction record drawings as required by Appendix 4 (General Design-Build Work Requirements);

(6) all Utilities specified or required under this Design-Build Agreement to be arranged for by the Design-Builder are connected and functioning properly;

(7) the Design-Builder and the Owner have agreed in writing upon the Preliminary Punch List in accordance with Section 3.20 (Final Punch List) (or, if they are unable to agree, the Owner shall have prepared and issued the Preliminary Punch List to the Design-Builder within 15 Business Days of the Design-Builder having submitted its proposed Preliminary Punch List to the Owner);

(8) the Design-Builder has delivered to the Owner written certification from the equipment manufacturers (including manufacturers of information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Design-Build Improvements have been properly installed and tested in accordance with the manufacturers' recommendations and requirements;

(9) the Design-Builder has delivered to the Owner a claims statement setting forth in detail all claims of every kind whatsoever of the Design-Builder connected with, or arising out of, the Design-Build Work pertaining to the Design-Build Improvements, and arising out of or based on events prior to the date when the Design-Builder gives such statement to the Owner;

(10) the Design-Builder has developed and conducted a program to train operating personnel designated by the Owner to operate and maintain the Design-Build Improvements in accordance with subsection 4.1(D) (Training of Owner Personnel) and the Owner's personnel have completed training in accordance with the training plan, in accordance with Appendix 4 (General Design-Build Work Requirements);

(11) the Design-Builder has delivered to the Owner the draft Operation and Maintenance Manual, in accordance with Appendix 4 (General Design-Build Work Requirements) and Appendix 9 (Operation and Maintenance-Related Deliverables); and

(12) the Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and the Owner has approved the Design-Builder's certification, which approval shall be effective as of the date of the Design-Builder's certification.

Alternatively, Substantial Completion shall occur on any date certified by the Owner, which shall have discretion to waive any of the foregoing conditions.

(B) Notice of Substantial Completion. The Design-Builder shall give the Owner's Contract Administrator at least 30 days' prior written notice of the expected date of Substantial Completion.

SECTION 3.20. FINAL PUNCH LIST.

As required by Section 3.19 (Substantial Completion), the Design-Builder shall submit a proposed Preliminary Punch List to the Owner and the Owner's Representative when the Design-Builder believes that the Design-Build Work has been substantially completed in compliance with this Design-Build Agreement. The "Preliminary Punch List" shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Design-Builder's opinion:

(1) the Design-Builder can complete before the Final Completion deadlines provided in Section 3.21 (Final Completion), and with minimal interference to the occupancy, use and lawful operation of the Design-Build Improvements; and

(2) would represent, to perform or complete, a total cost of not more than 2.5% of the portion of the Design-Build Price applicable to the construction of the Design-Build Improvements (unless the Owner determines that a higher percentage is acceptable).

In no event shall the Preliminary Punch List contain any incomplete items necessary for full Design-Build Improvements operations. The Preliminary Punch List shall be approved by the Owner, and upon such approval, the Preliminary Punch List shall become the Final Punch List. Completion of the Final Punch List work shall be verified by a final walk-through of the Design-Build Improvements conducted by the Owner and the Owner's Representative with the Design-Builder and the Construction Superintendent.

SECTION 3.21. FINAL COMPLETION.

(A) Requirements. The Design-Builder shall achieve Final Completion within 180 days after the Acceptance Date. "Final Completion" shall occur when all of the following conditions have been satisfied:

(1) Acceptance Achieved. The Design-Builder has achieved Acceptance of the Design-Build Improvements in accordance with Article 4 (Acceptance of the Design-Build Improvements);

(2) New Domestic Water Supply Permit. CDPH has issued the New Domestic Water Supply Permit, if the New Domestic Water Supply Permit has not been issued earlier; or, if earlier issued, the Project is operating in compliance with the New Domestic Water Supply Permit;

(3) Design-Build Work Completed. All Design-Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Design-Build Agreement;

(4) Certificate of Occupancy Issued. A final certificate of occupancy has been issued for the Design-Build Improvements or any component thereof, if required by Applicable Law;

(5) Deliverable Material. The Design-Builder shall have delivered to the Owner all Deliverable Material required by Section 3.16 (Deliverable Material);

(6) Final Record Drawings. The Design-Builder shall have delivered to the Owner a final and complete reproducible set of construction record drawings as required by Appendix 4 (General Design-Build Work Requirements);

(7) Equipment Warranties, Maintenance Contracts, and Manuals. The Design-Builder shall be in possession of, and shall have delivered to the Owner, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Design-Build Improvements and maintenance contracts required to be obtained under Section 3.18 (Warranties and Maintenance Contracts), together with copies of all related operating manuals supplied by the equipment supplier;

(8) Spare Parts In Storage. All spare parts required by the applicable Design and Construction Requirements have been delivered and are in storage at the Project Site;

(9) Payment of Claims. The Design-Builder has certified to the Owner that all of its claims against the Owner have been paid or withdrawn as provided in Section 5.4 (Final Requisition and Payment).

(10) Preparation of Notice of Completion. The Design-Builder has prepared and delivered to the Owner a signature-ready Notice of Completion meeting the requirements of Applicable Law, including California Civil Code section 8182, except that the Owner will enter the date of Final Completion.

(B) Failure to Achieve Final Completion. The Design-Builder shall achieve Final Completion within 180 days after the Acceptance Date; provided

that, if CDPH has issued an Interim Operations Approval that stipulates a condition for obtaining the New Domestic Water Supply Permit which is of a duration greater than 180 days after the Acceptance Date, the Design-Builder shall achieve all of the items required for Final Completion no later than 180 days after the Acceptance Date, and shall obtain the New Domestic Water Supply Permit no later than 60 days following the specified timeframe for completing such condition. If the Design-Builder fails to achieve any of the items set forth in subsection (A) of this Section by the last day of the applicable period specified in the preceding sentence, an Event of Default by the Design-Builder will be deemed to have occurred under Section 8.5 (Events of Default by the Design-Builder).

SECTION 3.22. NOTICE OF COMPLETION.

(A) Generally. Promptly following Final Completion and acceptance of the Design-Build Work by the Owner in accordance with its standard administrative practice, the Owner shall record the Notice of Completion.

(B) Effect of the Filing of the Notice of Completion. Upon the recording of the Notice of Completion:

(1) the parties' obligations hereunder during the Design-Build Period shall terminate, and the Design-Builder shall have no further obligation to furnish and maintain the Required Insurance;

(2) as provided in Section 10.3 (Letter of Credit), the Design-Builder shall have no further obligation to maintain the Letter of Credit; and

(3) the Design-Builder shall be entitled to payment of the undisputed balance of the Design-Build Price, including retention amounts, in accordance with Section 5.4 (Final Requisition and Payment).

ARTICLE 4

ACCEPTANCE OF THE DESIGN-BUILD IMPROVEMENTS

SECTION 4.1. COMMISSIONING AND START UP.

(A) General. The Design-Builder may commission and start up the Design-Build Improvements, test equipment and subsystems, and conduct post-start up (but pre-Acceptance Testing) operations at its election at any time, whether prior or subsequent to Substantial Completion, in accordance with this Section. The cost of all such commissioning activities, regardless of their extent or duration, is included in the Design-Build Price.

(B) Notices. The Design-Builder shall give the Owner (1) at least 90 days' prior written notice of the expected date of commencement of start-up operations, which notice shall include a certification (to be confirmed as of the date start up operations commence) that the Design-Builder is in full compliance with all of the conditions of the Governmental Approvals applicable to the Design-Build Improvements and other Applicable Law; and (2) notice as to the Design-Builder's requirements for Raw Water during commissioning and start-up operations reasonably in advance of the date by which the Design-Builder requires the Raw Water.

(C) Operation and Maintenance Manual. The Design-Builder shall provide to the Owner and the Owner's Representative a detailed description of the electronic Operations and Maintenance Manual which the Design-Builder is required to provide pursuant to and in conformance with Appendix 4 (General Design-Build Work Requirements). Such detailed description shall describe, among other things, the Operation and Maintenance Manual's features, and provide a content and organizational overview, and shall be delivered to the Owner within the time frame set forth in Appendix 4 (General Design-Build Work Requirements).

(D) Training of Owner Personnel. The Design-Builder shall, on not less than 30 days' prior written notice to the Owner, conduct a comprehensive training program for the Owner's operating personnel in order to enable them perform the Acceptance Test and to assume operating and management responsibility for the Design-Build Improvements as set forth in Appendix 4 (General Design-Build Work Requirements), and such training program shall be completed as a condition to Substantial Completion and prior to commissioning.

SECTION 4.2. INTERIM OPERATIONS APPROVAL AND NEW DOMESTIC WATER SUPPLY PERMIT.

(A) Authorization of Operation and Water Introduction. The Design-Builder acknowledges that the operation of the Design-Build Improvements and the supply of Finished Water by the Design-Build Improvements, to the Owner's customers is prohibited by Applicable Law until

an Interim Operations Approval, as defined in this subsection, or the New Domestic Water Supply Permit is issued by CDPH. CDPH may, but is not legally obligated to, issue a letter, permit with provisions or other instrument authorizing temporary operation of the Design-Build Improvements and the supply of Finished Water by the Design-Build Improvements to the Owner's customers until such time as the conditions of such letter, permit with provisions or other instrument have been satisfied and the New Domestic Water Supply Permit is issued (an "Interim Operations Approval"). The Design-Builder further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of CDPH.

(B) Owner's Responsibilities with Respect to the New Domestic Water Supply Permit. It is expected the CDPH will require submittals with respect to the Design-Build Improvements in connection with the issuance of the New Domestic Water Supply Permit. If CDPH requires submittals that do not pertain to the Design-Build Improvements in connection with the issuance of the New Domestic Water Supply Permit, the Owner shall have sole responsibility, on a timely basis, to prepare all information and take all actions which may be necessary in order to submit a completed application with respect to all aspects of the New Domestic Water Supply Permit other than those pertaining to the Design-Build Improvements.

(C) Design-Builder Obligations Generally. The Design-Builder shall cooperate with CDPH throughout the Design-Build Period and, except as provided in subsection (B) of this Section, shall make all applications and take all other action necessary, including performing all required testing, to obtain and maintain the New Domestic Water Supply Permit and any Interim Operations Approval, and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of the Owner, subject to the Owner's rights hereunder. The Design-Builder shall manage the process of obtaining the New Domestic Water Supply Permit and any Interim Operations Approval in a manner which affords the Owner a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 6 (Design-Build Work Review Procedures); provided, however, that the Owner shall have the right to take any action it deems necessary to coordinate the Design-Builder's efforts with its own efforts pursuant to subsection (B) of this Section. The Design-Builder shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the New Domestic Water Supply Permit and any Interim Operations Approval or the terms and conditions thereof that would impose any unreasonable cost or burden on the Owner or that would contravene any Owner policies with respect to the matters contained therein. The Owner reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Design-Builder which would have such effect. The Design-Builder shall

bear the responsibility and risk with respect to any pilot testing required by CDPH provided in Section 3.7 (Approved Technology and Pilot Testing).

(D) Design-Builder Assumption of Risk. The Design-Builder explicitly assumes the risk of obtaining the New Domestic Water Supply Permit and any Interim Operations Approval from CDPH as contemplated in subsection (C) of this Section, including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith; provided, however, that the Design-Builder shall be afforded relief from the assumption of such risk upon the occurrence of any Change in Law described in items (a) or (b) of such defined term. In assuming this risk, the Design-Builder acknowledges in particular that (1) the delay or non-issuance of the New Domestic Water Supply Permit or an Interim Operations Approval may delay or prevent the supply of Finished Water to the Owner's customers, the commencement of the Acceptance Tests, or the occurrence of Acceptance, and unless such delay or failure is due to a Change in Law or a moratorium or other formalized suspension or interruption in the processing or issuance of the New Domestic Water Supply Permit by the CDPH, such delay or non-issuance shall thereby give the Owner the right to impose delay liquidated damages or terminate this Design-Build Agreement as provided in Sections 4.5 (Scheduled Acceptance Date and Delay Liquidated Damages), and 4.8 (Failure to Achieve Acceptance) and (2) CDPH may impose or enforce terms and conditions which require the Design-Builder to make changes or additions to the Design-Build Improvements or Design-Build Improvements operations which may increase the cost or risk to the Design-Builder of performing the Design-Build Work, all of which costs or risks shall be for the account of and borne by the Design-Builder. The exercise by CDPH of any of its authorized discretion with respect to the New Domestic Water Supply Permit or an Interim Operations Approval shall not constitute a Change in Law. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Design-Build Improvements, use of additional technologies or equipment, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Design-Builder assumes the risk. The Design-Builder shall promptly inform the Owner of any unreasonable request or requirement imposed by CDPH. The Owner will use good faith efforts to work with the Design-Builder to persuade the CDPH to change any unreasonable request or requirement imposed by CDPH identified by the Design-Builder and agreed upon as unreasonable by the Owner.

SECTION 4.3. ACCEPTANCE TESTING.

(A) Submittal of Acceptance Test Plan. At least 180 days before the earlier of the Scheduled Acceptance Date or the date upon which the Design-Builder plans to begin Acceptance Testing, the Design-Builder shall prepare and submit to the Owner for its approval a detailed Acceptance Test Plan, which shall conform to the requirements of Appendix 7 (Acceptance Test Procedures and Requirements) in all respects. If the Design-Builder and Owner

are unable to agree upon an acceptable Acceptance Test Plan within 90 days of such submittal, either party may elect to initiate dispute resolution procedures in accordance with Section 8.12 (Non-Binding Dispute Resolution Procedures).

(B) Notice of Commencement of the Acceptance Tests. The Design-Builder shall provide the Owner with at least 30 days' prior written notice of the expected initiation of the Acceptance Tests in accordance with the requirements of Appendix 7 (Acceptance Test Procedures and Requirements) (the "Design-Builder Acceptance Test Commencement Date Notice"). At least 10 days prior to the actual commencement of Acceptance Testing, the Design-Builder shall certify in writing that it is ready to begin Acceptance Testing in accordance with the Acceptance Test Plan and Appendix 7 (Acceptance Test Procedures and Requirements).

(C) Conditions to Commencement of the Acceptance Tests. The Design-Builder shall not commence the Acceptance Tests until the following events have occurred:

(1) The requirements of subsections (A) and (B) of this Section have been met and the Owner has approved the Acceptance Test Plan;

(2) If required by Applicable Law, CDPH has approved the Acceptance Test Plan proposed by the Design-Builder and approved by the Owner;

(3) Substantial Completion has occurred;

(4) The New Domestic Water Supply Permit or an Interim Operations Approval has been issued by CDPH, and contains sufficient authorization to permit the Acceptance Tests and post-Acceptance Test operations to be conducted in accordance herewith;

(5) The Design-Builder has authorization from all appropriate Governmental Bodies for the performance of the procedures necessary to achieve Acceptance and for the conduct of the Acceptance Tests under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended;

(6) The Design-Builder has submitted to the Owner and the Owner has reviewed and approved the Acceptance Test Plan as required by Appendix 7 (Acceptance Test Procedures and Requirements); and

(7) The Design-Builder has certified that it has complied with the pre-Acceptance Testing requirements of Appendix 7 (Acceptance Test Procedures and Requirements).

(D) Conduct of the Acceptance Tests. The Design-Builder shall conduct the Acceptance Tests utilizing Owner staff that has been trained by the Design-Builder in accordance with Appendix 4 (General Design-Build Work Procedures). The Acceptance Test shall be conducted in accordance with Appendix 7 (Acceptance Test Procedures and Requirements), the Acceptance Test Plan, and the requirements of Applicable Law. The Owner's Representative and other designated supervisory representatives of the Owner may inspect the preparations for the Acceptance Tests and be present for the conduct of the Acceptance Tests. During the performance of the Acceptance Tests, Owner operating personnel will operate the Design-Build Improvements in accordance with the Acceptance Test Plan as described in Appendix 7 (Acceptance Test Procedures and Requirements). If the Design-Builder, Owner or the Owner's Representative believes that the ongoing conduct of the Acceptance Test is jeopardizing the ability of the Design-Build Improvements to comply with any requirements of Applicable Law or is otherwise adversely affecting the performance of the Design-Build Improvements, such party shall notify the other party thereof. Upon such notification, the Acceptance Testing shall immediately terminate. The Design-Builder shall make all corrections in order to avoid any such adverse consequence and shall re-initiate the Acceptance Tests. If it is determined that the Design-Build Improvements failed the Acceptance Tests and the Design-Builder successfully demonstrates that such failure was due to the failure to receive Raw Water within the Specified Raw Water Quality Parameters or the failure of Owner staff to follow the Acceptance Test Plan, such failure shall constitute an Uncontrollable Circumstance. In such event, the Owner shall have the option of declaring that the Acceptance Tests have been passed or requiring the Design-Builder to re-perform the tests, in which event the Design-Builder would be entitled to cost and schedule relief.

(E) Test Report. Within 21 days following the last day of any Acceptance Test, the Design-Builder shall furnish the Owner and the Owner's Representative with ten copies of a written Acceptance Test report consistent with the requirements specified in Appendix 7 (Acceptance Test Procedures and Requirements), certified as true, complete and correct by the Design-Builder. The failure of the Design-Builder to furnish the certified Acceptance Test report within such 21-day period shall constitute a breach of this Design-Build Agreement and such failure shall not operate to extend the Extension Period or affect the Owner's rights to assess liquidated damages and terminate this Design-Build Agreement pursuant to Sections 4.5 (Scheduled Acceptance Date and Delay Liquidated Damages) and 4.8 (Failure to Achieve Acceptance).

SECTION 4.4. ACCEPTANCE DATE CONDITIONS.

The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by the Design-Builder (or waived in writing by the Owner) in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

(1) Achievement of Acceptance Standards and Requirements. The Design-Builder shall have completed the Acceptance Tests and such tests shall have demonstrated that the Design-Build Improvements have met the Acceptance Standards and Requirements, as certified by the Design-Builder pursuant to Section 4.3 (Acceptance Testing) and agreed to by the Owner pursuant to Section 4.7 (Concurrence or Disagreement with Test Results);

(2) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law which are necessary for the continued routine operation of the Design-Build Improvements shall have been duly obtained by the Design-Builder and shall be in full force and effect. Certified copies of all such Governmental Approvals, to the extent not in the Owner's possession, shall have been delivered to the Owner;

(3) Final Operation and Maintenance Manual. The Design-Builder has delivered to the Owner the final Operation and Maintenance Manual in accordance with Appendix 9 (Operation and Maintenance-Related Deliverables); and

(4) No Default. The Design-Builder has certified that there is no Event of Default by the Design-Builder existing under this Design-Build Agreement or by the Guarantor under the Guaranty Agreement, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Design-Builder hereunder or an Event of Default by the Guarantor under the Guaranty Agreement.

SECTION 4.5. SCHEDULED ACCEPTANCE DATE AND DELAY LIQUIDATED DAMAGES.

(A) Schedule for Completing the Design-Build Work. The Design-Builder shall achieve Acceptance by the Scheduled Acceptance Date, as such date may be extended in accordance with this Section. If one or more delays in the Design-Build Work caused by an Uncontrollable Circumstance, Change Order, or Owner election to direct the timing of the commencement of the Acceptance Test pursuant to Section 4.6 (Owner Right to Direct the Timing of the Commencement of the Acceptance Test) occurs during the Design-Build Period, the Scheduled Acceptance Date shall be the date determined by adding to the Schedule Acceptance Date the aggregate number of days of delay in the performance of the Design-Build Work by the Design-Builder caused by such occurrence. If any such adjustment, delay liquidated damages payable by the Design-Builder under this Section, if any, shall be payable from the adjusted Scheduled Acceptance Date.

(B) Acceptance Prior to Scheduled Acceptance Date. If Acceptance occurs on or prior to the Scheduled Acceptance Date, the Design-Builder shall have no obligation to pay delay liquidated damages hereunder.

(C) Acceptance Subsequent to Scheduled Acceptance Date; Delay Liquidated Damages. If Acceptance occurs subsequent to the Scheduled Acceptance Date, the Design-Builder shall pay to the Owner daily delay liquidated damages in accordance with this subsection for each day that the Acceptance Date falls after the Scheduled Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Design-Build Agreement as permitted hereunder. The amount of such daily delay liquidated damages payable shall be $10,000.00 per day, for each day of delay. Such damages shall be payable on the first day of each month and, upon any termination for failure to achieve Acceptance, upon the date of termination. Such delay liquidated damages shall be in addition to any third-party indemnity obligations of the Design-Builder resulting from such delay including any fines or penalties imposed upon the Owner due to such delay.

SECTION 4.6. OWNER RIGHT TO DIRECT THE TIMING OF THE COMMENCEMENT OF THE ACCEPTANCE TEST.

(A) Election of the Owner to Direct the Timing of the Commencement of the Acceptance Test. The parties acknowledge and agree that the implementation by the Owner of infrastructure necessary to deliver Raw Water to the Design-Build Improvements and to pipe Finished Water off-site to the Owner's distribution system will be a critical factor in the ability of the Acceptance Test to be performed. Accordingly, the Owner shall have the right, exercisable in its sole discretion by written notice to the Design-Builder, to delay the performance of the Acceptance Test. The Owner shall notify the Design-Builder of its election pursuant to this Section not later than 15 days following receipt of the Design-Builder Acceptance Test Commencement Date Notice. If the Owner does not elect to exercise its right to direct the timing of the commencement of the Acceptance Test pursuant to this subsection, the provisions of this Section shall not apply. If the Owner elects under this subsection to exercise its right to direct the timing of the commencement of the Acceptance Test, the Design-Builder shall commence the Acceptance Test on the Specified Acceptance Test Commencement Date in accordance with subsection 4.6(B) (Owner Notice of Acceptance Test Commencement) and the provisions of this Section shall apply.

(B) Owner Notice of Acceptance Test Commencement. Subject to the election notification requirements of subsection 4.6(A) (Election of the Owner to Direct the Timing of the Commencement of the Acceptance Test), the Owner shall have the right to direct the Design-Builder to commence the Acceptance Test upon 15 days notice at any time during the 180-day period following the Acceptance Test Readiness Date. The date that is 15 days following the date of the Owner's notice delivered pursuant to this Section shall be the "Specified Acceptance Test Commencement Date". The Design-Builder shall commence the Acceptance Test on the Specified Acceptance Test Commencement Date in accordance with the specific requirements set forth in

Section 4.3 (Acceptance Testing) and Appendix 7 (Acceptance Test Procedures and Requirements).

(C) Price Relief for Owner-Caused Delay. The Owner shall pay the Design-Builder its reasonable Cost Substantiated costs incurred due to an Owner-directed or Owner-caused (such as unavailability of Raw Water required for Acceptance Testing) delay in the commencement of the Acceptance Tests unless a lump sum price is negotiated between the Owner and the Design-Builder.

(D) Partial Capacity Utilization. If the Design-Builder provides the Acceptance Test Commencement Date Notice, and only a portion of the Raw Water necessary for Acceptance Tests is available, the Owner may elect to utilize a portion of the Design-Build Improvement's capacity, subject to the approval of CDPH of the introduction of treated water into the Owner's water distribution system, based upon the following conditions: [to be developed by the parties prior to execution].

SECTION 4.7. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) Acceptance Date Concurrence. If the Design-Builder verifies in the written report delivered pursuant to subsection 4.3(E) (Test Report) that the Acceptance Date Conditions have been satisfied, the Owner shall determine, within 60 days of its receipt of such report, whether it concurs with such certification. If the Owner states in writing that it concurs with the Design-Builder's certification or does not provide written notice of its non-concurrence as set forth in subsection (B) below with such 60-day period, the Design-Build Improvements shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on the date of the Design-Builder's original certification of the Acceptance Date.

(B) Acceptance Date Disagreement. If the Owner determines at any time during such 60-day review period that it does not concur with the Design-Builder's certification delivered pursuant to subsection 4.3(E) (Test Report), the Owner shall immediately send written notice to the Design-Builder of the basis for its disagreement. If any such non-concurrence by the Owner, either party may elect to initiate dispute resolution procedures in accordance with Section 8.12 (Non-Binding Dispute Resolution Procedures). Acceptance shall not be deemed to have been achieved unless the Acceptance Tests, conducted in a unified and continuous manner as provided in the Acceptance Test Plan and in Appendix 7 (Acceptance Test Procedures and Requirements), demonstrate that all of the Acceptance Standards and Requirements have been met. If the Design-Builder, in conducting the Acceptance Tests, does not successfully meet the Acceptance Standards and Requirements, the Design-Builder shall re-test the Design-Build Improvements in accordance with Appendix 7 (Acceptance Test Procedures and Requirements). Nothing in this

Section shall prevent the Design-Builder from bringing an action or from repeating any Acceptance Test in order to establish the achievement of Acceptance. The Design-Builder shall provide the Owner with at least three days' written notice of any re-test of the Acceptance Tests.

SECTION 4.8. FAILURE TO ACHIEVE ACCEPTANCE.

Unless, as of the last day of the Extension Period, Acceptance has been achieved, an Event of Default by the Design-Builder will be deemed to have occurred under Section 8.2 (Events of Default by the Design-Builder) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Design-Builder thereunder, and the Owner shall thereupon have the right to terminate this Design-Build Agreement upon written notice to the Design-Builder. The Owner's right of termination under this Section shall apply notwithstanding any interim operations. Upon any such termination, the Owner shall have all of the rights provided in Article 8 (Breach, Default, Remedies and Termination) upon a termination of the Design-Builder for cause.

SECTION 4.9. NO ACCEPTANCE, WAIVER OR RELEASE.

None of the following shall be construed as the Owner's acceptance of any Design-Build Work which is defective, incomplete, or otherwise not in compliance with this Design-Build Agreement, or as the Owner's release of the Design-Builder from any obligation, guarantee, or warranty under this Design-Build Agreement, or as the Owner's extension of the Design-Builder's time for performance, or as an estoppel against the Owner, or as the Owner's acceptance of any claim by the Design-Builder:

(1) the Owner's payment to the Design-Builder or any other person of all or any portion of the Design-Build Price (including any payment upon Final Completion, or while the Design-Builder is requesting any extension of time); or the Owner's failure to retain any portion of the Design-Build Price; or the Owner's change or variation in the time, method or condition of payment;

(2) the Owner's review or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than certificates relating to completion or Acceptance of the Design-Build Improvements), or Design-Build Work of the Design-Builder or any Subcontractor;

(3) the Owner's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design-Build Work;

(4) the Owner's failure to include any item on any punch list or similar document unless the Owner explicitly approves such an omission (any such omissions shall be approved or acknowledged in writing);

(5) the Owner's entry at any time on the Project Site (including any area in which the Design-Build Work is being performed) or the Owner's use or occupancy of the Project Site at any time (whether before or after Substantial Completion or Final Completion);

(6) any inspection, testing, or review of any Design-Build Work (whether finished or in progress) by the Owner, the Owner's Representative or any other person; or

(7) the failure of the Owner, the Owner's Representative, or any Owner consultant to respond in writing to any notice or other communication of the Design-Builder.

ARTICLE 5

PAYMENT OF THE DESIGN-BUILD PRICE

SECTION 5.1. DESIGN-BUILD PRICE.

(A) Design-Build Price Generally. The Design-Builder shall be entitled to receive the Design-Build Price for the Design-Build Services on a progress basis in accordance with the terms of this Section. The Design-Build Price shall be the sum of the Fixed Design-Build Price and the Fixed Design-Build Price Adjustments.

(B) Fixed Design-Build Price. The Fixed Design-Build Price shall be $_____ ~~[Note: As proposed on Proposal Form 13 as modified by escalating the Construction Component Price in accordance with the Construction Component Price Escalator from the date which is 90 days following the Proposal submittal date to the Contract Date]~~86,984,544.65. Except as provided in subsection (C) of this Section, the Fixed Design-Build Price shall not be subject to adjustment in any manner whatsoever.

(C) Fixed Design-Build Price Adjustments. The following items shall constitute the Fixed Design-Build Price Adjustments:

(1) An adjustment for the cost of any Change Orders issued by the Owner with respect to the Design-Build Improvements;

(2) An adjustment for the cost of any Uncontrollable Circumstances required pursuant to Section 9.3 (Uncontrollable Circumstances – Entitlement to Relief), provided that prior to the Construction Date any increased costs resulting from Uncontrollable Circumstance-caused delay shall solely be through escalation of the Fixed Design-Build Price pursuant to item (3) below.

(3) An adjustment of the Construction Component Price portion of the Fixed Design-Build Price by multiplying (i) the Construction Component Price, by (ii) the change in the Construction Component Price Escalator between (a) ~~[Note: the date that is 90 days following the Proposal submission date will be inserted here]~~January 15, 2014 and (b) the actual Construction Date, provided however that the Fixed Design-Build Price shall not escalate during delays caused in whole or in part by Design-Builder Fault.

(4) An adjustment in the amount of the Capacity Reduction Price Adjustment, if applicable.

(5) A downward adjustment representing the balance of the Project Allowance ~~representing available funds allocated~~ for Project Allowance Items for which the parties have not agreed upon a guaranteed fixed price as of the Construction Date. Such adjustment shall be made prior to adjusting the price in accordance with the escalation provision in item (3) above.

(6) A downward adjustment representing the aggregate amount of escalation of each of the fixed prices agreed upon for each of the Project Allowance Items from January 15, 2014, until the date of agreement of each such fixed price as memorialized in a Contract Administration Memorandum as calculated by multiplying the agreed upon fixed price by the Construction Component Price Escalator. Such adjustment shall be made subsequent to adjusting the Construction Component Price in accordance with the escalation provision in item (3) above.

(7) An adjustment representing the election by the Owner to accept an alternative included in Appendix 8 (Design-Build Alternatives) pursuant to subsection 3.1(P) (Design-Build Alternatives).

(D) Limitation on Payments for Costs of the Design-Build Improvements. The Design-Builder agrees that the Design-Build Price shall be the Design-Builder's entire compensation and reimbursement for the performance of the Design-Build Work, including obtaining all Utilities that the Design-Builder will require to perform the Design-Build Work, commissioning and starting up the Design-Build Improvements, conducting the Acceptance Tests, and performing all repairs and replacements during the Warranty Period (the "Warranty Work"), except that the Design-Builder will not be responsible for the cost of Owner's labor force performing the Acceptance Test (except if the Acceptance Tests have to be repeated due to the unexcused failure of the Design-Build Improvements to pass the initial tests). In no event shall the Design-Builder be entitled to any payment for Design-Build Improvements costs in excess of the Design-Build Price, notwithstanding any cost overruns the Design-Builder may incur. The Design-Builder shall finance and pay for any such excess cost of the Design-Build Improvements in any manner it chooses without reimbursement from or other claim upon the Owner.

SECTION 5.2. PAYMENT PROCEDURES AND AMOUNTS.

(A) Schedule of Values. The Design-Builder shall prepare and submit to the Owner for its approval preliminary and final drafts of the Schedule of Values in accordance with the requirements of Appendix 13 (Payment Procedures and Drawdown Schedule). After the final Schedule of Values is accepted by the Owner, it shall be used to assist in the estimating of the value of the Design-Build Work performed for payment purposes. The Design-Builder

shall not submit requests for progress payments unless a final Schedule of Values has been approved.

(B) Design-Build Work Disbursement Procedure. Following the establishment of the Contract Date, the Design-Builder shall be entitled to submit Requisitions and receive from the Owner the payments, which (1) shall be made on a percent complete basis in accordance with the Schedule of Values, and (2) shall be subject to the conditions to payment set forth in this Section (and the limitation in subsection 3.2(E) (Limitation on Owner Payment Responsibility Prior to Issuance of CPCN)). Each Requisition must be accompanied by a monthly requisition report, which shall include:

(1) a reasonably detailed description of all Design-Build Work actually completed to date;

(2) revisions to the progress schedule (or a revised progress schedule) which shall reflect changes in the Design-Builder's construction schedule since the date of the last Requisition;

(3) revisions to the cost-loaded work sequence schedule, which shall reflect changes in the work sequence schedule since the date of the last Requisition;

(4) construction progress photographs;

(5) a certificate of the Construction Superintendent and the Engineer certifying (1) the portion of the Design-Build Price which is payable to the Design-Builder, (2) that the Design-Builder is neither in default under this Design-Build Agreement nor in breach of any material provision of this Design-Build Agreement such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (3) that all items applicable to the Design-Build Work entitling the Design-Builder to the requested payment under the Schedule of Values have been completed in accordance therewith and with the Design and Construction Requirements;

(6) notice of any Encumbrances which have been filed together with evidence that the Design-Builder has discharged or bonded against any such Encumbrances or made timely notification to the Payment Bond surety regarding such Encumbrances; and

(7) any other documents or information relating to the Design-Build Work or this Design-Build Agreement reasonably requested by the Owner or the Owner's Representative or as may be required by Applicable Law, this Design-Build Agreement or generally accepted accounting practices or principles.

The Owner's Representative shall review the Design-Builder's certified Requisitions to the Owner for each Design-Build Price payment and within seven days after receipt of the Design-Builder's written report delivered pursuant to this Section, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Design-Builder's certification that the Design-Builder has achieved the level of progress indicated and is entitled to payment. If the Owner's Representative determines that the Design-Build Work has progressed to the level indicated in the Design-Builder's certified Requisition and the Owner's Representative provides written notice thereof to the Design-Builder and the Owner, thereupon the Design-Builder shall be entitled to payment within 30 days after the Owner's receipt of the Design-Builder's certified Requisition. Disputes regarding payments of the Design-Build Price shall be resolved in accordance with subsection (C) of this Section. Any undisputed amounts of the Design-Build Price shall be paid in within 30 days after the Owner's receipt of the Design-Builder's certified Requisition.

(C) Disbursement Dispute Procedures. If the Owner's Representative determines, pursuant to subsection (B) of this Section, that the Design-Build Work required for any payment has not progressed as indicated by the Design-Builder, or otherwise disputes any Requisition, the Owner's Representative shall provide prompt written notice to the Design-Builder and the Owner as to the Owner's Representative's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Design-Builder may make the necessary corrections and resubmit a certified Requisition to the Owner's Representative, or the Owner's Representative may agree on a revised amount, Requisition or estimate, as applicable, in which case the Design-Builder shall promptly notify the Owner of such agreement. If the Design-Builder is unable to reach agreement with the Owner's Representative as to the progress of the Design-Build Work, the Design-Builder may exercise its right to contest the Owner's Representative's determination in accordance with either the dispute resolution procedures set forth in Section 8.12 (Non-Binding Dispute Resolution Procedures). Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if (1) the Design-Builder demonstrates to the Owner's Representative that the Design-Build Work has proceeded as indicated in the certified Requisition giving rise to the dispute or that any disputed certified Requisition is correct, and (2) the Owner's Representative concurs with such demonstration. The Design-Builder shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the Owner shall pay all requisitioned amounts which are not in dispute in accordance with subsection (B) of this Section. If upon resolution of any such dispute, it is determined that the Design-Builder was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Design-Builder shall be entitled to receive, promptly following such resolution, such disputed amount

plus interest on such disputed amount for the period of dispute calculated in accordance with Section 11.7 (Interest on Overdue Obligations).

(D) Retainage. Each progress payment will be subject to a five percent (5%) retainage holdback, after subtracting any amounts owing for design services and construction management services. Interest earned on the retainage holdback shall be for the Owner's benefit, and shall not be paid to the Design-Builder. The Owner shall release to the Design-Builder the accumulated funds retained upon receipt of certification from the Design-Builder and confirmation by the Owner's Representative that Acceptance has occurred pursuant to subsection 4.7(A) (Acceptance Date Concurrence); provided, however, that to the extent items are contained on the Final Punch List, the Owner or the Owner's Representative shall reasonably estimate the cost to make each correction or to complete each such item and the Owner shall be entitled to withhold from payment of the retained funds an amount equal to 150% of the aggregate value of such items, in addition to 150% of the amount of unresolved or unbounded claims or Liens by third parties in connection with the Design-Build Work and earned interest on such retained funds. Upon (1) certification by the Owner's Representative that Final Completion has occurred, (2) the recording of the Notice of Completion by the Owner in accordance with Section 3.22 (Notice of Completion), and (3) so long as authority contained in the Governmental Approvals to operate the Design-Build Improvements remains unimpaired, the Owner shall release to the Design-Builder all remaining retained funds.

(E) Certification of Amounts Due. Whenever requested by the Owner, the Design-Builder shall submit a sworn statement certifying all amounts then due (or yet to become due) the Design-Builder for the Design-Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Design-Builder and any Subcontractor.

(F) No Waiver or Release. No progress payments made by the Owner to the Design-Builder pursuant to this Section shall constitute an acceptance of the Design-Build Work, or any portion thereof, or a waiver or release by the Owner of any rights relating to the Design-Builder's obligations under this Design-Build Agreement.

(G) Project Allowances. The parties acknowledge that the Fixed Design-Build Price contains an allowance in the aggregate amount of ~~$460,000~~1,826,266.51 (the "Project Allowance") for certain portions of the Design-Build Work identified in Appendix 12 (Allowances) (the "Project Allowance Items"). To the extent practicable, prior to the Construction Date the parties shall agree to guaranteed fixed prices for each Project Allowance Item. The agreed upon fixed price for each Project Allowance Item shall be escalated by the Construction Component Price Escalator from the date that the parties agree to the fixed price of such Project Allowance Item (as memorialized in a Contract Administration Memorandum) until the Construction

Date. The individual allowances related to each Project Allowance Item represent the maximum amount which the Owner anticipates will be paid for such Project Allowance Item; provided, however, the Owner may agree to a price for an individual item in excess of the corresponding allowance without a Change Order as long as the aggregate payments for the Project Allowance Items do not exceed the Project Allowance. If the aggregate payments do exceed the Project Allowance, the parties shall negotiate an amendment to reflect such increased amount as well as the increase to the Fixed Design-Build Price.

(H) On the Construction Date, the Fixed Design-Build Price will be adjusted accordingly as set forth in Section 5.2 (Payment Procedure and Amount). If a guaranteed fixed price for any Project Allowance Item has not been set prior to the Construction Date, the balance of the Project Allowance shall be deducted from the Fixed Design-Build Price and the Owner shall have the option of either (i) agreeing with the Design-Builder to another methodology for fixing the payment for such Project Allowance Item (e.g. cost-plus guaranteed maximum price, or future guaranteed fixed price) or (ii) bidding such work out to a third party in which even such work will no longer constitute Design-Build Work for which the Design-Builder is responsible. In either event, the parties shall memorialize their agreement on how to proceed through the execution of a Contract Administration Memorandum as set forth in subsection 11.4(B) (Contract Administration Memorandum).

SECTION 5.3. PERMISSIBLE WITHHOLDINGS.

In addition to the amounts required to be retained pursuant to subsection 5.2(D) (Retainage), the Owner may disapprove, withhold and retain all or any portion of any payment requested in any Requisition (including the final Requisition) in an amount sufficient to pay the expenses the Owner reasonably expects to incur in correcting any deficiency set forth in the Owner's Representative's written finding pursuant to subsection 5.2(C) (Disbursement Dispute Procedure). Without limiting the foregoing, the Design-Builder agrees that the Owner may disapprove, withhold and retain, as applicable and to the extent permitted by Applicable Law, amounts associated with the following:

(1) any liquidated damages which are due and owing to the Owner hereunder;

(2) any indemnification amounts which are due and owing to the Owner hereunder and with respect to which a claim has been filed against the Owner by a third party in accordance with Applicable Law;

(3) any deductions or withholdings which are required by Applicable Law;

(4) any payments with respect to which documents to be delivered in connection therewith are not correct and complete;

(5) any payments with respect to which the Design-Build Work covered by such Requisition (or any previous Requisition) does not comply with this Design-Build Agreement;

(6) any payments with respect to which any person has asserted a Lien or stop notice resulting from the acts or omissions of the Design-Builder in performing the Design-Build Work and such stop notice or Lien remains unreleased or unbonded;

(7) all requisitioned payments, if an Event of Default of the Design-Builder has occurred under Section 8.2 (Events of Default by the Design-Builder); and

(8) if the Design-Builder fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Design-Builder authorizes the Owner to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

SECTION 5.4. FINAL REQUISITION AND PAYMENT.

(A) Final Requisition. Upon achieving Final Completion in accordance with Section 3.21 (Final Completion), the Design-Builder shall prepare and submit to the Owner a final Requisition. The final Requisition shall include:

(1) A certificate from the Design-Builder's surety in a form, reasonably acceptance to the Owner, that the surety agrees that final payment of the Design-Build Price shall not relieve the surety of any of its obligations under the Performance Bond or the Payment Bond;

(2) a contractor's affidavit regarding settlement of claims and complete and legally effective releases or waivers in a form provided by California Civil Code Section 3262 and acceptable to the Owner in the full amount of the Design-Build Price, or if any Subcontractor refuses or fails to furnish such release or waiver, a bond or other security acceptable to the Owner to indemnify the Owner Indemnitees against any payment claim; and

(3) a list of all pending property damage and personal injury or other insurance claims arising out of or resulting from the Design-Build Work, identifying the claimant and the nature of the claim.

(B) Final Payment. If based on the Owner's Representative's (1) observation of the Design-Build Work, (2) final inspection, and (3) review of

the final Requisition and other documents required by subsection (A) of this Section and Section 3.21 (Final Completion), the Owner's Representative is satisfied that conditions for Final Completion have been satisfied or waived in writing by the parties, the Owner's Representative shall, within 30 days after receipt of the final Requisition, furnish to the Owner and the Design-Builder the Owner's Representative's recommendation of final payment and Final Completion. If the Owner's Representative is not satisfied, the Owner's Representative within seven days shall return the final Requisition to the Design-Builder, indicating in writing the reasons for not recommending final payment, in which case the Design-Builder shall either (1) exercise its right to contest the Owner's Representative's determination in accordance with subsection 5.2(C) (Disbursement Dispute Procedures), or (2) make the necessary corrections and resubmit the final Requisition.

(1) Owner Concurrence. If the Owner concurs with the Owner's Representative's recommendation of final payment and Final Completion, the Owner shall following receipt of such recommendation promptly record the Notice of Completion in accordance with Section 3.22 (Notice of Completion) and within 60 days following the recording of the Notice of Completion, or on request by the Design-Builder for payment on an earlier date as required by Applicable Law, pay to the Design-Builder the undisputed balance of the Design-Build Price, subject to any withholdings and any other provisions governing final payment specified herein or required by Applicable Law.

(2) Owner Non-Concurrence. If the Owner does not concur with the Owner's Representative's determination, the Owner shall return the Requisition to the Design-Builder, through the Owner's Representative, indicating in writing its reasons for refusing final payment and Final Completion. The Design-Builder shall promptly make the necessary corrections and resubmit the Requisition to the Owner's Representative. The Owner's written determination shall bind the Design-Builder, unless the Design-Builder delivers to the Owner, through the Owner's Representative, written notice of a claim within 30 days after receipt of that determination.

Final payment does not constitute a waiver by the Owner of any rights relating to the Design-Builder's obligations under this Design-Build Agreement. Final payment constitutes a waiver of all claims by the Design-Builder against the Owner relating to the Design-Build Work, the payment of the Design-Build Price or otherwise in connection with the Design-Build Period other than those previously filed in writing with the Owner on a timely basis and still unsettled.

SECTION 5.5. CONSTRUCTION BOOKS AND RECORDS; AUDIT.

(A) Construction Books and Records. The Design-Builder shall prepare and maintain proper, accurate and complete books and records

regarding the Design-Build Work and all other transactions related to the design, permitting, construction, shakedown and testing of the Design-Build Work, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design-Build Work, this Design-Build Agreement, any Subcontract or any operations or transactions in which the Owner has or may have a financial or other material interest hereunder. All financial books and records of the Design-Builder and its Subcontractors shall be maintained in accordance with generally accepted accounting principles. If the Design-Builder fails to prepare or maintain any books, records or accounts as required under this subsection, the Design-Builder shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. To the extent any such information is delivered or made available to the Owner, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principals. The Design-Builder shall keep and maintain all such construction books and records for the Design-Build Work separate and distinct from other records and accounts, and shall keep and maintain all such books and records for at least seven years after the date of the filing of the Notice of Completion, or such longer period during which any Legal Proceeding with respect to the Design-Build Work commenced within seven years after the filing of the Notice of Completion may be pending.

(B) Audit Rights and Requirements. All payments whatsoever by the Owner to the Design-Builder and all Design-Build Work of the Design-Builder shall be subject to audit at any time by the Owner. Any audit of the Design-Builder's costs of performing the Design-Build Work shall be subject to the provisions of subsection (A) of this Section. The Design-Builder shall produce the construction books and records required to be kept and maintained by the Design-Builder pursuant to subsection (A) of this Section for examination and copying by the Owner in connection with the payment of the Design-Build Price and with the costs of Change Orders, Uncontrollable Circumstance costs, or other costs in addition to the Design-Build Price under circumstances in which such costs are the responsibility of the Owner hereunder and are required to be Cost Substantiated pursuant to this Design-Build Agreement. The Design-Builder shall not be required to produce such construction books and records with respect to costs incurred in connection with Design-Build Work performed on a negotiated fixed price basis. Notwithstanding any of the foregoing, the Design-Builder shall produce all books and records required to be maintained pursuant to subsection (A) of this Section to the extent that such books and records pertain directly to contract performance if there is reasonable indication of fraud, gross abuse or corrupt practices. The provisions of this Section shall survive the termination of this Design-Build Agreement.

SECTION 5.6. SALES AND USE TAXES PAYABLE WITH RESPECT TO THE DESIGN-BUILD WORK.

In its performance of the Design-Build Work, the Design-Builder acknowledges that construction materials and supplies acquired by the Design-Builder or any Subcontractor in connection with the Design-Build Work may be subject to State sales and use tax. The Design-Builder further acknowledges that these taxes have been taken into account in establishing the Fixed Design-Build Price and that the Design-Builder shall not be entitled to additional compensation if it made improper assumptions as to any such Tax requirements except in connection with a Change in Law.

ARTICLE 6

WARRANTIES

SECTION 6.1. WARRANTY OF PROFESSIONAL SERVICES.

The Design-Builder warrants to the Owner that all engineering and other professional services provided with respect to the Design-Build Work will be provided in accordance with the terms of this Design-Build Agreement and will, at a minimum, conform to the standard of care required of professional engineers performing similar services. The Owner's review or comment on any Design Documents or other instruments of professional service shall not constitute a waiver by the Owner of any of the Design-Builder's warranties or obligations under this Article nor shall this warranty limit the Design-Builder's obligations or the Owner's rights under any other warranty or obligation contained in this Design-Build Agreement.

SECTION 6.2. WARRANTY OF MATERIALS AND EQUIPMENT.

The Design-Builder warrants to the Owner that the materials, machinery, structures, improvements and equipment furnished as part of the Design-Build Improvements will be new, of recent manufacture, of good quality, that the Design-Build Work will be free from defects and that the Design-Build Work will conform with the requirements of this Design-Build Agreement. Design-Build Work not conforming to these requirements, including substitutions not properly approved and authorized by the Owner, may be considered defective. The Design-Builder's warranty set forth in this Section: (1) excludes remedy for damage or defect caused by modifications not executed by the Design-Builder, ~~grossly~~ improper or ~~grossly~~ insufficient maintenance or operation, or normal wear and tear under normal usage; and (2) includes remedy for damage or defect caused by any defects or errors in the Operation and Maintenance Manual prepared by the Design-Builder.

SECTION 6.3. MANUFACTURERS' WARRANTIES.

The Design-Builder shall, for the protection of the Owner, obtain from all Subcontractors, vendors, suppliers and other persons from which the Design-Builder procures structures, improvements, fixtures, machinery, equipment, and materials to be incorporated in the Design-Build Improvements such warranties and guarantees as are normally provided with respect thereto as well as those that are specifically required in Appendix 2 (Design and Construction Requirements) and the Contract Standards, each of which shall be assigned to the Owner to the full extent of the terms thereof. No such warranty shall relieve the Design-Builder of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Design-Build Price or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to an Uncontrollable Circumstance.

SECTION 6.4. WARRANTY OF ADEQUACY OF CONSTRUCTION SERVICES.

The Design-Builder warrants to the Owner that all construction and related services provided under this Design-Build Agreement with respect to the Design-Build Work shall be performed in a good and workmanlike manner, by workers who are appropriately trained and experienced in the work being performed, and in accordance with the Contract Standards.

SECTION 6.5. CALL-BACK OBLIGATIONS.

(A) Call-Back Generally. If, at any time during the one-year period following the Acceptance Date or an extended period as set forth in subsection 6.5(C) (Extension of Warranties) below (the "Warranty Period"), any of the Design-Build Work is found to be malfunctioning or otherwise not in accordance with the requirements of this Design-Build Agreement, 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 release of such condition. The Owner shall give such notice promptly after discovery of the condition. The Design-Builder shall respond to critical or emergency service calls within 8 hours by telephone. The Design-Builder shall respond to critical or emergency service calls from the Owner within 24 hours and non-critical or non-emergency calls within five Business Days. Such response shall require that a competent representative familiar with the specific equipment used in the Design-Build Improvements inspect the Design-Build Improvements and, while on site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time. In critical or emergency situations (including any circumstances that may prevent the Design-Build Improvements from being on-line at full production while meeting the requirements of Applicable Law), that time period shall not exceed 48 hours after the on-site inspection. For non-emergencies, such period shall not exceed ten calendar days. The obligations and time limitations set forth in this Section shall not limit the Design-Builder's obligations or the Owner's rights set forth in Section 6.1 (Warranty of Professional Services) with respect to the warranty of professional services.

(B) No Period of Limitation on Other Design-Build Work Warranties. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Design-Builder has under this Design-Build Agreement or under Applicable Law with respect to the Design-Build Improvements, including warranties with respect to latent defects. The Warranty Period relates only to the specific obligation of the Design-Builder to correct the Design-Build Work, and has no relationship to the time within which the obligation to comply with this Design-Build Agreement may be enforced, nor 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 Design-Build Work.

(C) Extension of Warranties. The "call-back" obligations set forth in this Section shall apply to all of the Design-Build Work including work re-done pursuant to the terms of this Section. The "call-back" obligations for re-done elements of the Design-Build Work shall apply only to the item of work re-done and shall extend beyond the initial one-year period to provide at least a one-year period following acceptance of such re-done Design-Build Work.

(D) Design-Builder Reliance on Manufacturers' Warranties During Call-Back Period. During the period in which the call-back obligations set forth in this Section are in effect, the Design-Builder shall be permitted to enforce all warranties provided by manufacturers and suppliers. Notwithstanding the applicability or effectiveness of such warranties, the Design-Builder shall be required to comply with the requirements set forth in subsection (A) of this Section.

SECTION 6.6. WARRANTIES NOT EXCLUSIVE.

(A) No Limitation. The warranties set forth in this Article are in addition to, and not in limitation of, any other warranties, rights and remedies available under this Design-Build Agreement or Applicable Law, and shall not limit the Design-Builder's liability or responsibility imposed by this Design-Build Agreement or Applicable Law with respect to the Design-Build Improvements Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

(B) Compensation. The Design-Builder acknowledges that the Design-Build Price contains the entire compensation due the Design-Builder for any and all Warranty Work to be performed by the Design-Builder or its Subcontractors or agents. If any amounts are required to be paid to third parties to perform Warranty Work, payment of such amounts shall be the responsibility of the Design-Builder. Notwithstanding the above, the Design-Builder will be compensated for its substantiated costs for Warranty Work which it demonstrates is required due to ~~grossly~~ improper or ~~grossly~~ insufficient maintenance or operation by the Owner.

(C) Performance of Warranty Work. All Warranty Work shall be performed in accordance with the Contract Standards. The Design-Builder shall perform or cause to be performed all Warranty Work in a manner which will minimize interference with the ongoing operations of the Design-Build Improvements. The Design-Builder shall provide a written plan for its proposed Warranty Work (unless expressly waived by the Owner).

ARTICLE 7

PERFORMANCE PERIOD OPTIMIZATION

SECTION 7.1. POST-ACCEPTANCE PERFORMANCE GENERALLY.

The parties acknowledge that the Owner has procured the Design-Build Work with the objective of achieving optimum performance following the Acceptance Date. In order to ensure such performance, the Owner has required the Design-Builder to demonstrate water quality and electricity utilization guarantees through Acceptance Tests and has required the Design-Builder to provide significant warranties including the call-back warranties described in Section 6.5 (Call-Back Obligations) and the long-term warranties for membranes and other elements of the Design-Build Work set forth in Appendix 2 (Design and Construction Requirements). To further ensure optimized performance of the Design-Build Improvements, the Design-Builder has agreed to provide optimization consulting for the three-year period following the Acceptance Date as described in Section 7.2 (Optimization Consulting Services).

SECTION 7.2. OPTIMIZATION CONSULTING SERVICES.

The Design-Builder shall provide optimization and engineering consulting services for a thirty-six (36) month period following Acceptance to assist in optimizing performance and efficiency of the Design-Build Improvements. These services, including labor, travel costs, and related costs are included as part of the Fixed Design-Build Price. The Design-Builder shall provide optimization reviews every three months for a total of twelve (12) optimization reviews. Each optimization review is to include a review of operating data, a site visit by one or more consulting engineer staff members, preparation of a trip/status report, and a follow-up conference call to discuss the trip/status report. The Design-Builder is to provide one or more staff with a working knowledge of the Design-Build Improvements and previous experience in optimizing RO processes. The Design-Builder is to use the same personnel on each optimization review to the extent possible. The trip/status report is to address chemical treatment, electrical consumption, membrane performance, unit process performance including finished water quality, and recommendations to improve operational performance and efficiency. The trip/status reports, in addition to plant performance data, may be used by the Owner to document performance of the Design-Build Improvements and to maintain the prerequisites of the membrane warranty. The Owner will provide operating and maintenance data for review by the Design-Builder. The data is to include normalized RO performance data for each train, including for the second pass, and membrane cleaning data. Membrane autopsy reports will be provided when available.

ARTICLE 8

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 8.1. REMEDIES FOR BREACH.

The parties agree that, except as otherwise provided in this Article with respect to termination rights, if either party breaches this Design-Build Agreement, the other party may exercise any legal rights it may have under this Design-Build Agreement, under the Security Instruments and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Design-Build Agreement for cause except upon the occurrence of an Event of Default. If a party exercises its rights to recover damages upon a breach of this Design-Build Agreement or upon a termination due to an Event of Default, such party shall use all reasonable efforts to mitigate damages.

SECTION 8.2. EVENTS OF DEFAULT BY THE DESIGN-BUILDER.

(A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Design-Builder upon which the Owner, by notice to the Design-Builder, may terminate this Design-Build Agreement without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Design-Builder to obtain and maintain in full force and effect any Security Instrument required by Section 10.2 (Bonds) as security for the performance of this Design-Build Agreement, without excuse for Uncontrollable Circumstances;

(2) Failure to Achieve Acceptance. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Acceptance prior to the end of the Extension Period as provided in Section 4.8 (Failure to Achieve Acceptance);

(3) Emergency Response. The failure of the Design-Builder to promptly take all appropriate action upon the Design-Builder becoming aware that a public health or safety emergency exists or is threatened with respect to the Design-Build Work;

(4) Insolvency. The insolvency of the Design-Builder or the Guarantor as determined under the Bankruptcy Code;

(5) Voluntary Bankruptcy. The filing by the Design-Builder or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Design-Builder or the Guarantor to the filing of any bankruptcy or reorganization petition against the Design-Builder or the Guarantor under the Bankruptcy Code; or the filing by the Design-Builder or the Guarantor of a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Code;

(6) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Design-Builder or the Guarantor or of a major part of the Design-Builder's or the Guarantor's property, respectively, or the filing against the Design-Builder or the Guarantor of a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively;

(7) Gross Misconduct. An official or employee of the Design-Builder or the Guarantor has engaged in activity at the Project Site or otherwise in connection with performance under this Design-Build Agreement which constitutes criminal activity or a gross misfeasance of duty, notwithstanding the fact that at the time the notice of an Event of Default is given such failure or refusal to perform may no longer exist or be continuing; or

(8) Default of Guarantor. The failure of the Guarantor to perform any payment or other material obligation under the Guaranty in a timely manner.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Design-Builder upon which the Owner may terminate this Design-Build Agreement, by notice to the Design-Builder, if:

(1) Representations and Warranties. Any representation or warranty of the Design-Builder hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Design-Build Agreement or the Guaranty Agreement or the ability of the Design-Builder to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligations thereunder is thereby materially and adversely affected; or

(2) Payment or Performance. The Design-Builder fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the Owner under this Design-Build Agreement within 60 days following the due date for such payment, or (b) to perform any obligation under this Design-Build Agreement (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein).

No event set forth in items (1) or (2) of this subsection (B) shall constitute an Event of Default giving the Owner the right to terminate this Design-Build Agreement for cause under this subsection unless:

(i) Notice. The Owner has given prior written notice to the Design-Builder and the surety providing the Performance Bond, as applicable, by stating that a specified default has occurred which gives the Owner a right to terminate this Design-Build Agreement for cause under this Section, and describing the default in reasonable detail; and

(ii) Action to Correct. The Design-Builder has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence (completion to have occurred in no event more than 90 days unless otherwise agreed to by the Owner).

(C) Other Remedies Upon Design-Builder Event of Default. The right of termination provided under this Section upon an Event of Default by the Design-Builder is not exclusive. If this Design-Build Agreement is terminated by the Owner for an Event of Default by the Design-Builder, the Owner shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Design-Build Agreement, under the Security Instruments and under Applicable Law.

(D) Relationship to Liquidated Damages. Any delay liquidated damages payable by the Design-Builder under this Design-Build Agreement shall cease to accrue on the Termination Date. The Design-Builder shall be liable for all delay liquidated damages that have accrued up to the Termination Date (subject to the limit set forth in subsection 8.3 (Delay Liquidated Damages Limit). The parties acknowledge and agree that such liquidated damages are intended solely to compensate the Owner for costs and expenses associated with the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that the Owner is likely to suffer if a Design-Builder Event of Default under this Article. Accordingly, except as specifically provided in Section 8.3 (Limitation on Design-Builder Liability) and except with respect to damages relating solely to the specific circumstances for which liquidated damages are provided under this Design-Build Agreement, the payment of any such liquidated damages by the

Design-Builder shall not serve to limit or otherwise affect the Owner's right to pursue and recover damages under subsection (C) of this Section.

SECTION 8.3. LIMITATION ON DESIGN-BUILDER LIABILITY.

(A) Design-Builder Liability Limit. Subject to Section 8.4 (Applicability and Interpretation of the Limitation of Liability), the Design-Builder's aggregate liability under this Design-Build Agreement and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages of any kind payable to the Owner arising out of the performance or unexcused non-performance of the Design-Build Work as a consequence of a claim or action initiated by the Owner shall not exceed an amount equal to 125% of the Design-Build Price.

(B) Delay Liquidated Damages Limit. The aggregate liability of the Design-Builder, with respect to any liquidated damages payable pursuant to Section 4.5 (Scheduled Acceptance Date and Delay Liquidated Damages), shall not exceed an amount equal to five percent (5%) of the Design-Build Price. The liquidated damages payable to the Design-Builder shall be in addition to any indemnification payments that the Design-Builder is required to make in accordance with Section 9.5 (Indemnification by the Design-Builder).

(C) Relationship to Security for Performance of Design-Build Work. Pursuant to Section 10.2 (Bonds), the Design-Builder has provided or will provide a Payment Bond and a Performance Bond in the amount of 100% of the Design-Build Price. Nothing in this Section shall limit the security provided by either the Payment Bond or the Performance Bond.

SECTION 8.4. APPLICABILITY AND INTERPRETATION OF THE LIMITATION ON LIABILITY.

The limitation on Design-Builder liability provided for in subsection 8.3(A) (Design-Builder Liability Limit) applies solely to the liability of the Design-Builder and the Guarantor for damages to the Owner arising out of the performance or unexcused non-performance of the Design-Build Work as a consequence of a claim or action initiated by the Owner and shall include, but not be limited to, delay liquidated damages paid to the Owner pursuant to Section 4.5 (Scheduled Acceptance Date and Delay Liquidated Damages) and damages associated with a termination by the Owner resulting from a Design-Builder Event of Default as permitted by Section 8.2 (Events of Default by the Design-Builder). The limitation on liability provided for in Section 8.3 (Limitation on Design-Builder Liability) does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Design-Builder or the Guarantor in connection with this Design-Build Agreement, including any of the following liabilities, losses, damages, costs or expenses:

(1) Any loss, cost or expense sustained by the Design-Builder in the performance of the Design-Build Work or any other loss sustained by the Design-Builder, the Guarantor, or any other party in connection with this Design-Build Agreement, the Guaranty Agreement or other agreement relating to the Design-Build Improvements;

(2) Any loss, cost or expense sustained by the Design-Builder, the Guarantor, or the Design-Builder's surety in seeking to cure or prevent any breach of this Design-Build Agreement by the Design-Builder;

(3) Any claims, losses or penalties incurred by the Design-Builder or the Guarantor to third parties in any Legal Proceedings;

(4) Any indemnity payment (resulting from third party claims, fines, or penalties) made or required to be made by the Design-Builder or the Guarantor to the Owner in accordance with Section 9.5 (Indemnification by the Design-Builder), provided however, that any indemnity payment made or required to be made by the Design-Builder or the Guarantor for any fine or penalty levied by any Governmental Body resulting from the Design-Builder's failure to achieve Acceptance on or before the Scheduled Acceptance Date shall not be excluded from the limitation of liability provided for in Section 8.3 (Limitation on Design-Builder Liability); and

(5) Any claims, losses, penalties or settlement payments paid to the Owner in connection with any tort claim by the Owner against the Design-Builder based on negligence, willful misconduct, fraud, misrepresentation or false claims.

SECTION 8.5. EVENTS OF DEFAULT BY THE OWNER.

(A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the Owner upon which the Design-Builder, by notice to the Owner, may terminate this Design-Build Agreement:

(1) Representations and Warranties. Any representation or warranty of the Owner hereunder was false or inaccurate in any material respect when made, and the legality of this Design-Build Agreement or the ability of the Owner to carry out its obligations hereunder is thereby materially and adversely affected;

(2) Failure to Pay or Perform. The failure, refusal or other default by the Owner in its duty: (1) to pay the amount required to be paid to the Design-Builder under this Design-Build Agreement within 60 days following the due date for such payment; or (2) to perform any other material obligation under this Design-Build Agreement (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein); or

(3) Bankruptcy. The authorized filing by the Owner of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the Owner shall not in and of itself constitute an Event of Default hereunder.

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Design-Builder the right to terminate this Design-Build Agreement for cause under this subsection unless:

(1) The Design-Builder has given prior written notice to the Owner stating that a specified default has occurred which gives the Design-Builder a right to terminate this Design-Build Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The Owner has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence (completion to have occurred in no event more than 90 days unless otherwise agreed to by the Design-Builder).

(C) Limitation of Liability Upon Owner Event of Default. If this Design-Build Agreement is terminated by the Design-Builder for cause as a result of an Event of Default by the Owner during the Term, the damages payable by the Owner upon any such termination shall not exceed the amounts specified in subsections 8.6(B) (Owner Convenience Termination Right Option Prior to the Construction Date) and 8.6(C) (Owner Convenience Termination Right Option After the Construction Date and Prior to Final Completion), as applicable, and calculated as provided therein, which would be payable if this Design-Build Agreement were terminated during the Term, according to the date of termination, at the election of the Owner for convenience and without cause.

(D) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Design-Builder shall also be paid all amounts due for the Design-Build Work performed prior to the

Termination Date to be paid as part of the Design-Build Price but not yet paid as of the Termination Date.

SECTION 8.6. OWNER TERMINATION OPTIONS DURING THE DESIGN-BUILD PERIOD.

(A) Owner Termination for Cause. The Owner shall have the right during the Design-Build Period to terminate this Design-Build Agreement for cause and to pursue all remedies available pursuant to this Article, without cost or liability to the Owner, based upon the occurrence of any Event of Default by the Design-Builder under Section 8.2 (Events of Default by the Design-Builder) during the Design-Build Period.

(B) Owner Convenience Termination Right Option Prior to the Construction Date. The Owner shall have the right at any time prior to the Construction Date, exercisable in its discretion, for its convenience and without cause, to terminate this Design-Build Agreement upon written notice. Such written notice shall specify the date which this Design-Build Agreement is terminated. Upon any such termination, the Owner shall pay the Design-Builder an amount equal to the reasonable costs of demobilization (not to exceed $200,000), subject to Cost Substantiation and after settlement of payments owing the Design-Builder as of the Termination Date under subsection (D) of this Section.

(C) Owner Convenience Termination Right Option After the Construction Date and Prior to Final Completion. The Owner shall have the right at any time after the Construction Date and prior to Final Completion, exercisable in its discretion, for its convenience and without cause, to terminate this Design-Build Agreement upon written notice. Such written notice shall specify the date which this Design-Build Agreement is terminated. Upon any such termination, the Owner shall pay the Design-Builder an amount equal to the reasonable costs of demobilization (not to exceed $500,000) and reasonable Subcontractor contract cancellation costs, subject to Cost Substantiation and after settlement of payments owing the Design-Builder as of the Termination Date under subsection (D) of this Section.

(D) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Design-Builder shall also be paid all amounts due for the Design-Build Work performed prior to the Termination Date to be paid as part of the Design-Build Price but not yet paid as of the Termination Date.

(E) Delivery of Design-Build Period Work Product to the Owner. Concurrently with payment by the Owner to the Design-Builder of the amount due upon any termination of this Design-Build Agreement under this Section, the Design-Builder shall deliver to the Owner all of its Design-Build Period work product (including all Deliverable Material) produced during the period

commencing on the Contract Date to the Termination Date hereunder, which work product immediately shall become the property of the Owner. The Owner's use of any such work product for any purpose other than the Design-Build Improvements shall be at its own risk and the Design-Builder shall have no liability therefor.

SECTION 8.7. GENERAL PROVISIONS REGARDING CONVENIENCE TERMINATION.

(A) Termination Fee Payment Contingent Upon Surrender of Possession. The Owner shall have no obligation to pay the applicable termination fee provided for in Section 8.6 (Owner Termination Options During the Design-Build Period), except concurrently with the surrender of possession and control by the Design-Builder of the Design-Build Improvements to the Owner.

(B) Adequacy of Termination Payment. The Design-Builder agrees that the applicable termination fee provided in Section 8.6 (Owner Termination Options During the Design-Build Period) shall fully and adequately compensate the Design-Builder and all Subcontractors for all costs of undertaking their obligations under subsection 8.8(A) (Design-Builder Obligations), foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Design-Builder's right to perform this Design-Build Agreement.

(C) Consideration for Convenience Termination Payment. The right of the Owner to terminate this Design-Build Agreement for its convenience and in its discretion in accordance with this Article constitutes an essential part of the overall consideration for this Design-Build Agreement, and the Design-Builder hereby waives any right it may have under Applicable Law to assert that the Owner owes the Design-Builder a duty of good faith dealing in the exercise of such right.

(D) Completion or Continuance by Owner. After the date of any termination under this Article, the Owner may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Design-Build Work so terminated, including entering into contracts with other contractors.

SECTION 8.8. OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION OR EXPIRATION.

(A) Design-Builder Obligations. Upon the termination or expiration of this Design-Build Agreement under any provision hereof, the Design-Builder shall, as applicable:

(1) stop the Design-Build Work on the date and to the extent specified by the Owner;

(2) promptly deliver to the Owner all Design Documents and construction record drawings prepared by the Design-Builder in carrying out the Design-Build Work which have not previously been delivered to the Owner, and all supporting design notebooks, calculations, record files, design meeting memoranda, and construction meeting memoranda;

(3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property including all of the items described in item (8) below;

(4) promptly remove from the Design-Build Improvements all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Design-Builder (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal;

(5) clean the Design-Build Improvements and the Project Site, and leave them in a neat and orderly condition;

(6) promptly remove all employees of the Design-Builder and any Subcontractors and vacate the Design-Build Improvements;

(7) promptly deliver to the Owner a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Design-Builder or any Subcontractor but not yet incorporated in the Design-Build Improvements;

(8) deliver to the Owner the Operation and Maintenance Manual and all computer programs ~~used at~~and licenses purchased for the Design-Build Improvements ~~in the performance of the Design-Build Work,~~(including all revisions and updates thereto);

(9) provide the Owner with a list of all computer and other files relevant to the Design-Build Improvements and access, user names, passwords and security codes with instructions and demonstrations which show how to open and change such codes;

(10) deliver to the Owner a copy of all books and records in its possession relating to the performance of the Design-Build Work, and including all books, records, documents and computer data relating to the operation, maintenance, activities and administration of the Design-Build Improvements and its various components and facilities;

(11) advise the Owner promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(12) promptly deliver to the Owner copies of all Subcontracts, together with a statement of:

(a) the items ordered and not yet delivered pursuant to each agreement;

(b) the expected delivery date of all such items;

(c) the total cost of each agreement and the terms of payment; and

(d) the estimated cost of canceling each agreement;

(13) assign to the Owner any Subcontract that the Owner elects in writing, at its sole election and without obligation, to have assigned to it. The Owner shall assume, and the Design-Builder shall be relieved of its obligations under, any Subcontract so assigned;

(14) unless the Owner directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(15) provide the Owner with a list of all Design-Build Improvements subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which the Owner will be responsible for paying on or after the Termination Date;

(16) as directed by the Owner, transfer to the Owner by appropriate instruments of title, and deliver to the Design-Build Improvements (or such other place as the Owner may specify), all special order items pursuant to this Design-Build Agreement for which the Owner has made or is obligated to make payments;

(17) promptly transfer to the Owner all warranties given by any manufacturer or Subcontractor with respect to particular components of the Design-Build Work;

(18) notify the Owner promptly in writing of any Legal Proceedings against the Design-Builder by any Subcontractor or other third parties relating to the termination of the Design-Build Work (or any Subcontracts);

(19) give written notice of termination, effective as of date of termination of this Design-Build Agreement, promptly under each policy of Required Insurance (with a copy of each such notice to the Owner), but permit the Owner to continue such policies thereafter at its own expense, if possible;

(20) retain on the Design-Build Improvements, computer systems to be delivered to the Owner including all Design-Build Improvements-related files, data, information and software and to not delete any such files, data, information or software; and

(21) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the Owner's costs, and take no action which shall increase any amount payable by the Owner under this Design-Build Agreement.

(B) Continuity of Service and Technical Support. Upon the termination or expiration of this Design-Build Agreement under any provision hereof, the Design-Builder, at the request and direction of the Owner, shall provide for an effective continuity of service and the smooth and orderly transition of construction management to the Owner or any replacement contractor designated by the Owner. Such service shall be for a period of up to 90 days and shall include providing technological and design advice and support and delivering any plans, drawings, renderings, bluelines, operating manuals, computer programs, spare parts or other information useful or necessary for the Owner or any replacement contractor designated by the Owner to carry out and complete the Design-Build Work. In addition, the Design-Builder shall provide the Owner and any replacement contractor with a one-time training program relating to the operation and maintenance of the Design-Build Improvements.

(C) Design-Builder Payment of Certain Costs. If termination is pursuant to Section 8.2 (Events of Default By the Design-Builder), the Design-Builder shall be obligated to pay the costs and expenses of undertaking its obligations under subsection (B) of this Section. If the Design-Builder fails to comply with any obligation under this Section, the Owner may perform such obligation and the Design-Builder shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

(D) Owner Payment of Certain Costs. If termination is for the convenience of the Owner under Section 8.6 (Owner Termination Options During the Design-Build Period) or due to a Owner Event of Default pursuant to Section 8.5 (Events of Default by the Owner), or upon the expiration of this Design-Build Agreement in accordance with its terms, the Owner shall pay to the Design-Builder within 60 days of the date of the Design-Builder's invoice supported by Cost Substantiation all reasonable costs and expenses incurred by

the Design-Builder in satisfying its obligations under subsection (B) of this Section.

(E) Design-Builder Retention of Deliverable Materials. Upon any termination or expiration of this Design-Build Agreement, the Design-Builder may retain hard copies or electronic copies of all Deliverable Material.

SECTION 8.9. NO WAIVERS.

No action of the Owner or Design-Builder pursuant to this Design-Build Agreement (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Design-Build Agreement. No course of dealing or delay by the Owner or Design-Builder in exercising any right, power or remedy under this Design-Build Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Owner or the Design-Builder under this Design-Build Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 8.10. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.

Notwithstanding any other provision of this Design-Build Agreement, the following provisions hereof shall survive the expiration or earlier termination of this Design-Build Agreement:

(1) Article 2 (Representations and Warranties);

(2) Section 3.16 (Deliverable Material);

(3) Section 5.5 (Construction Books and Records; Audit)

(4) Section 8.12 (Non-Binding Dispute Resolution Procedures);

(5) Article 8 (Breach, Default, Remedies and Termination), as applicable to the obligations of the parties following the Termination Date;

(6) Section 9.5 (Indemnification by the Design-Builder);

(7) Section 11.6 (Property Rights);

(8) Section 11.12 (Fair Employment and Contracting Policy);

(9) Section 11.14 (Confidentiality);

(10) Appendix 11 (Insurance Requirements); and

(11) all other provisions of this Design-Build Agreement that so provide shall survive the termination of this Design-Build Agreement;

(12) together with any provision necessary to give effect to the above provisions. No termination of this Design-Build Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 8.11. NO SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive, or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Design-Build Agreement, or the material inaccuracy of any representation made in this Design-Build Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between the Owner and the Design-Builder, and specifically is not intended to limit the scope of the indemnity provisions in Section 9.5 (Indemnification by the Design-Builder), which indemnity includes all claims by third parties irrespective of the nature thereof or the relief sought thereby. The provisions of this Section 8.11 (No Special, Consequential, or Punitive Damages) shall survive expiration or termination of this Design-Build Agreement.

SECTION 8.12. FORUM FOR BINDING DISPUTE RESOLUTION.

Unless the parties mutually agree to submit a dispute to arbitration, judicial proceedings held in California state courts in Monterey County will be the sole forum for binding dispute resolution.

SECTION 8.13. NON-BINDING DISPUTE RESOLUTION PROCEDURES.

(A) Generally. Except as provided below, each party shall follow the dispute resolution procedures set forth in this Section to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated resolution of disputes in a prompt and efficient manner without resort to arbitration or litigation, which should be a last resort.

(B) Informal Negotiations. Representatives of the Owner and the Design-Builder with day-to-day involvement in the administration of this Design-Build Agreement and the performance of the Design-Build Work shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Design-Build Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Design-Build Improvements and this Design-Build Agreement. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation in accordance with this Section.

(C) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of subsection (B) of this Section, either party may request Non-Binding Mediation of any dispute arising under this Design-Build Agreement. The non-requesting party may decline the request in its discretion except with respect to claims regarding changes to the Design-Build Price or guaranteed schedules for which mediation may not be declined unless otherwise agreed to by the parties. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between the Owner and the Design-Builder.

(D) Procedure. The Mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(E) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Design-Build Agreement. No Mediator shall be empowered to render a binding decision.

ARTICLE 9

INSURANCE, DAMAGE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

SECTION 9.1. INSURANCE.

(A) Required Insurance. The Design-Builder shall obtain and maintain its Required Insurance in accordance with Appendix 11 (Insurance Requirements) and the provisions of this Design-Build Agreement, and shall pay all premiums with respect thereto as the same become due and payable. The Owner shall obtain and maintain its Required Insurance in accordance with Appendix 11 (Insurance Requirements) and the provisions of this Design-Build Agreement and shall pay all premiums with respect thereto as the same may become due and payable.

(B) Subcontractors. Whenever a Subcontractor is utilized, the Design-Builder shall require the Subcontractor to obtain and maintain insurance in accordance with Appendix 11 (Insurance Requirements) and shall provide the Owner with certificates evidencing such insurance.

(C) Compliance with Insurance Requirements. The Design-Builder shall comply with all applicable Insurance Requirements pertaining to the Project Site and the Design-Build Improvements under any policy of Required Insurance and take all steps necessary to assure that the Design-Build Improvements remain continuously insured in accordance with the requirements of this Design-Build Agreement during the Term.

(D) Failure to Provide Insurance Coverage. If the Design-Builder fails to pay any premium for its Required Insurance, or if any insurer cancels any of the Design-Builder's Required Insurance policies and the Design-Builder fails to obtain replacement coverage so that its Required Insurance is maintained on a continuous basis, the Owner may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by the Owner the amount thereof shall be immediately reimbursable to the Owner by the Design-Builder. The Design-Builder shall not perform Design-Build Work during any period when any policy of Required Insurance is not in effect. The failure of the Design-Builder to obtain and maintain, or cause to be obtained and maintained, any of its Required Insurance shall not relieve the Design-Builder of its liability for any losses intended to be insured thereby, be satisfaction of any Design-Builder liability under this Design-Build Agreement or in any way limit, modify or satisfy the Design-Builder's indemnity obligations hereunder. Should any failure to provide continuous insurance coverage occur, the Design-Builder shall indemnify, defend and hold harmless the Owner Indemnitees in accordance with and to the extent provided in Section 9.5 (Indemnification by the Design-Builder), from and against any and all Loss-and-Expense arising out of such failure.

(E) Reductions for Insurance Proceeds. Whenever this Design-Build Agreement obligates the Owner to pay any amount to the Design-Builder in respect of any event or circumstance for which, or with respect to the consequences of which an insurance claim may be made by the Design-Builder under the Required Insurance, the amount which the Owner is obligated to pay shall be reduced by the amount of such insurance proceeds which the Design-Builder recovers or would have been entitled to recover if it had complied with the requirements of this Design-Build Agreement or any policy of Required Insurance.

SECTION 9.2. LOSS, DAMAGE OR DESTRUCTION TO THE DESIGN-BUILD IMPROVEMENTS.

(A) Prevention and Repair. The Design-Builder shall use care and diligence, and shall take all appropriate precautions, to protect the Design-Build Improvements from loss, damage or destruction in accordance with Good Engineering and Construction Practice, Applicable Law and the Insurance Requirements. The Design-Builder shall report to the Owner, any other appropriate Governmental Body and the insurers under any applicable Required Insurance, promptly upon obtaining knowledge thereof, any loss, damage or destruction to any portion of the Design-Build Improvements or any OSHA recordable injury accident on the Project Site related to the Design-Build Work, and as soon as practicable thereafter (but in no event later than 72 hours) shall submit a full written report to the Owner. Such report shall be updated on a weekly basis and upon culmination of all tests, analysis and reviews, a final report incorporating all of the tests, analysis and reviews and the findings thereof shall be submitted to the Owner. The Design-Builder shall also submit to the Owner within 24 hours of receipt copies of all accident and other reports filed with, or given to the Design-Builder by, any insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Design-Build Improvements to at least the character or condition thereof existing immediately prior to the loss, damage or destruction, and such work shall be performed by the Design-Builder or the Owner, as applicable, as if it constituted (1) a Change Order in accordance with and subject to the procedures set forth in Article 3 (Permitting, Design, and Construction of the Design-Build Improvements) during the Design-Build Period. The Owner shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Design-Builder as if such work constituted Design-Build Work hereunder.

(B) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third-party, each party shall assist the other in exercising such rights as it may have to effect such recovery. All available insurance or other third-party payment proceeds shall be applied for such repair, replacement and restoration purposes in

accordance with subsection (C) of this Section. Each party shall provide the other with copies of all relevant documentation at no cost to the other party, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided, however, that neither party shall be obligated pursuant to this subsection to provide the other party with documents subject to the attorney-client privilege under State law.

(C) Payment for Restoration Work and Insurable Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Design-Build Improvements shall be for the account of the Owner to be used for repair, replacement and restoration costs.

(D) Repair of Owner and Private Property. The Design-Builder shall promptly repair or replace all Owner property and all private property damaged by the Design-Builder or any officer, director, employee, representative or agent of the Design-Builder in connection with the performance of, or the failure to perform, the Design-Build Work. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage. Nothing in this subsection is intended to waive any rights of recovery under applicable policies of insurance.

SECTION 9.3. UNCONTROLLABLE CIRCUMSTANCES – ENTITLEMENT TO RELIEF.

(A) Relief Available to the Design-Builder. If and to the extent that an Uncontrollable Circumstance interferes with, delays or increases the cost to the Design-Builder performing the Design-Build Work in accordance herewith, the Design-Builder shall be entitled to either relief from its performance obligations or an increase in the Fixed Design-Build Price (except as and to the extent provided in this Section, Section 9.4 (Uncontrollable Circumstances - Claim Procedures) and Section 9.5 (Indemnification by the Design-Builder)), or any combination thereof, each of which properly reflects the interference with performance, the amount of the increased cost, or the time lost as a result thereof, in each case at the sole option of the Owner and only to the minimum extent necessary to compensate the Design-Builder or provide performance relief and only to the extent directly attributable to the Uncontrollable Circumstance. The Design-Builder shall perform all other Design-Build Work not affected by the Uncontrollable Circumstances. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Design-Builder pursuant to subsection (B) of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Design-Build Price would have otherwise been increased or shall serve to reduce the Fixed Design-Build Price to reflect such mitigation measures, as applicable. The Design-Builder shall not be entitled to any price relief through an adjustment to the Fixed Design-

Build Price or otherwise on account of any costs incurred as the result of an act, event or circumstance that the Design-Builder or the Guarantor is obligated to insure against under Article 9 (Insurance) and Appendix 11 (Insurance Requirements), irrespective of any limits of coverage and of any deductible applicable under any policy of insurance maintained or required to be maintained thereunder.

(B) Mitigation. Whenever an Uncontrollable Circumstance occurs, the Design-Builder shall, as promptly as practicable, use all reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit damage to the parties, and resume or continue full performance under this Design-Build Agreement. The Design-Builder shall be compensated for any such mitigation costs as part of the Fixed Design-Build Price, and there shall be a Fixed Design-Build Price Adjustment to account for any such costs.

(C) Applicable Law Compliance. Nothing in this Section shall be interpreted as relieving the Design-Builder of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Design-Build Agreement in compliance with Applicable Law.

SECTION 9.4. UNCONTROLLABLE CIRCUMSTANCES – CLAIM PROCEDURES.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Design-Builder shall give notice of the occurrence of the Uncontrollable Circumstance to the Owner as soon as practicable, and in any event within ten days of the date the Design-Builder has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement to relief under this Design-Build Agreement. The Design-Builder's notice shall include a written report:

(1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;

(2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration;

(3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Design-Builder's obligations under this Design-Build Agreement; and

(4) Indicating the nature and scope of the Design-Builder's potential entitlement to relief.

(B) Updates. The Design-Builder shall provide the Owner with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable

Circumstance and the matters described in subsection (A) of this Section. In particular, the Design-Builder shall notify the Owner as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Design-Builder shall submit to the Owner a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in subsection (A) of this Section. If the specific relief cannot reasonably be ascertained within such 30-day period, the Design-Builder shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Design-Builder to the Owner after the dates required under this Section, then the Design-Builder shall be entitled to relief provided due to the occurrence of the Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Design-Builder may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Design-Builder shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Design-Builder complied with its mitigation obligations under subsection 9.3(B) (Mitigation).

(G) Resumption of Performance. Promptly following the occurrence of an Uncontrollable Circumstance, the Design-Builder shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Design-Build Agreement.

(H) Owner Response. Within 30 days after receipt of a relief request by the Design-Builder pursuant to subsection (C) of this Section, the Owner shall issue a written determination as to the extent, if any, to which it concurs with the Design-Builder's request, and the reasons therefor.

(I) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Design-Builder on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Design-Build Agreement Amendment, as applicable. Any issue in dispute relating to the assertion of the occurrence of an Uncontrollable Circumstance may be referred to the dispute resolution procedures set forth in Section 8.12 (Non-Binding Dispute Resolution Procedures).

SECTION 9.5. INDEMNIFICATION BY THE DESIGN-BUILDER.

The Design-Builder shall indemnify, defend and hold harmless the Owner and its agents, directors, officers, attorneys, affiliates (including parent company), employees, representatives, independent contractors, assigns and successors (each, an "Owner Indemnitee"), from and against (and pay the full amount of) any and all Loss-and-Expense incurred by an Owner Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with):

(1) the fault, negligence or willful misconduct of the Design-Builder or any of its officers, directors, employees, representatives, agents or Subcontractors;

(2) [the ~~performance or~~ non-performance by the Design-Builder of its obligations under this Design-Build Agreement; ~~or~~

(3) the failure of the Design-Builder to perform its obligations under this Design-Build Agreement in accordance with the Contract Standards; or]

(4) ~~(3)~~ any other matter identified as requiring indemnification by the Design-Builder under this Design-Build Agreement.

The Design-Builder's indemnity obligations hereunder shall not be limited by any insurance the Design-Builder does or does not maintain or by any matter relating to insurance. The Design-Builder shall not, however, be required to defend, reimburse, or indemnify any Owner Indemnitee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any Owner Indemnitee or to the extent attributable to any Uncontrollable Circumstance. These indemnification provisions are for the protection of the Owner Indemnitees only and shall not be deemed to create any right in favor of any third parties. The provisions of this Section shall survive the termination of this Design-Build Agreement.

ARTICLE 10

SECURITY FOR PERFORMANCE

SECTION 10.1. GUARANTOR.

(A) Guaranty Agreement. The Design-Builder, concurrently with the execution and delivery of this Design-Build Agreement, has caused the Guaranty Agreement to be provided by the Guarantor in the form attached hereto as a Transaction Form and such Guaranty Agreement shall remain effective throughout the Term.

(B) Material Decline in Guarantor's Credit Standing Defined. For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if neither the Design-Builder nor Guarantor maintain a Dun and Bradstreet credit rating of at least 5A3. The Design-Builder immediately shall notify the Owner of any Material Decline in Guarantor's Credit Standing.

(C) Credit Enhancement Upon a Material Decline in Guarantor's Credit Standing. If, at any time after the Contract Date and prior to the expiration of the Warranty Period, a Material Decline in Guarantor's Credit Standing occurs, the Design-Builder shall within 60 days of notice from the Owner either (1) provide a replacement Guarantor that is acceptable to the Owner or (2) increase the Letter of Credit to five million dollars ($5,000,000). The Owner shall have the right but not the obligation, exercisable in its sole and absolute discretion, to waive, modify (but not increase the face amount), alter or replace any of the foregoing requirements from time to time as and to the extent the Owner deems necessary to protect its interest and to secure the performance by the Design-Builder of its obligations hereunder and by the Guarantor of its obligations under the Guaranty Agreement in light of the nature, extent, and potential duration of the Material Decline in Guarantor's Credit Standing. The letter of credit required hereunder shall be in addition to all other Security Instruments required by this Design-Build Agreement.

(D) Restoration of Credit Standing. If, at any time following the occurrence of a Material Decline in Guarantor's Credit Standing, (1) the Guarantor ~~meets the Minimum Financial Criteria~~achieves a Dun and Bradstreet credit rating of at least 5A3, or (2) an additional guaranty agreement in a form substantially identical to the form of the Guaranty Agreement is provided by another company acceptable to the Owner, the increase to the letter of credit required in subsection 10.1(C) (Credit Enhancement Upon a Material Decline in Guarantor's Credit Standing) will no longer be required.

(E) Guarantor Annual Reports. The Design-Builder shall furnish the Owner, within 120 days after the end of the Guarantor's fiscal year, consolidated financial statements reported upon by the Guarantor's independent public accountant. If applicable, the Design-Builder shall also

furnish the Owner with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission or comparable foreign regulatory body, as applicable.

SECTION 10.2. BONDS.

(A) Performance Bond and Payment Bond. The Design-Builder shall provide the Owner with the Performance Bond and the Payment Bond as a Construction Date Condition pursuant to Section 3.2 (Construction Date Conditions). The Payment Bond shall be in the form required by California Civil Code Section 3247 as attached in Transaction Form B, and the Performance Bond shall be in the form attached as Transaction Form C. Each of the Payment Bond and the Performance Bond shall be in an amount equal to 100% of the Design-Build Price. The Performance Bond and the Payment Bond shall be issued by a surety company (1) approved by the Owner and having a rating of "A" in the latest revision of the A.M. Best Design-Builder's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Owner as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a valid certificate as an admitted surety authorized to transact surety business in the State. The Performance Bond and the Payment Bond shall comply with and shall be subject to the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.). The Performance Bond shall remain open in an amount equal to 100% of the Design-Build Price, including any Fixed Design-Build Price Adjustments, until the expiration of the Warranty Period. The Payment Bond shall remain open in an amount equal to 100% of the Design-Build Price, including any Fixed Design-Build Price Adjustments, for the statutory period following the filing of the Notice of Completion, as required by Applicable Law.

(B) Monitoring of Sureties. The Design-Builder shall be responsible throughout the Term for monitoring the financial condition of any surety company issuing bonds under this Design-Build Agreement and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. If the rating of any issuing surety company falls below such minimum level, the Design-Builder shall promptly notify the Owner of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the Owner agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the Design-Builder of such an event, the Owner shall not unreasonably withhold its approval of such assurance.

SECTION 10.3. LETTER OF CREDIT.

(A) Qualified Commercial Bank. A "Qualified Commercial Bank" for the purposes of this Design-Build Agreement shall mean a domestic or foreign commercial bank whose long-term debt is rated "A2" or higher by Moody's and whose long-term debt is rated "A" or higher by Standard & Poor's, and if there is a split rating, then the lower of the two shall apply. The Qualified Commercial Bank shall maintain a banking office in ~~either~~Los Angeles County, Monterey County, or San Francisco County. The Qualified Commercial Bank shall be subject to the approval of the Owner, which shall not unreasonably be withheld or delayed.

(B) Letter of Credit Requirements. The Letter of Credit shall be for a term of one year, shall be continuously renewed, extended or replaced so that it remains in effect until 180 days after the earlier of the Termination Date or the end of the Warranty Period, and shall be issued substantially in the form set forth in Transaction Form D. The Letter of Credit shall be in a stated amount (the "stated amount") equal to $1,000,000. The required stated amount shall, upon each renewal, extension or replacement thereof, be reduced by the aggregate amount of all amounts drawn on all previous Letters of Credit provided under this subsection. The stated amount of the Letter of Credit and the Owner's estimate of damages for purposes of its drawing rights under this Section shall in no way limit the amount of damages to which the Owner may be entitled for any material breach or Design-Builder Event of Default hereunder. In order to evidence the authorized reduction of the stated amount hereunder, the Owner, at the request of the Design-Builder, shall deliver to the Qualified Commercial Bank the certificate for reduction in stated amount provided for in Transaction Form D.

(C) Drawings for Non-Renewal or Bankruptcy. The Owner shall have the unconditional right to immediately draw upon the Letter of Credit for the full stated amount thereof upon the following conditions: (1) if any required renewal, extension or replacement thereof is not made earlier than the date which is 30 days prior to its expiration date; (2) the Design-Builder or the Guarantor (i) has filed a petition of voluntary bankruptcy under the Bankruptcy Code, (ii) has consented to the filing of any bankruptcy or reorganization petition against the Design-Builder or the Guarantor, or (iii) has filed a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Code; or (3) a court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Design-Builder or the Guarantor or of a major part of the Design-Builder's or the Guarantor's property, respectively, or a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Code has been filed against the Design-Builder or the Guarantor, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing. The proceeds of any such drawing shall be held by the Owner as cash collateral to secure the performance of the Design-Build Work and, if a material breach of this Design-

Build Agreement following any such drawing, may be retained by the Owner as payment or partial payment of damages resulting therefrom.

(D) Drawings for Termination. The Owner shall have the unconditional right to immediately draw upon the Letter of Credit an amount estimated by the Owner as representing the damages it has suffered as a result of the termination of this Design-Build Agreement by the Owner pursuant to Section 8.6 (Owner Termination Options During the Design-Build Period).

(E) Drawings for Material Breach. The Owner shall have the right to draw upon the Letter of Credit in an amount estimated by the Owner as representing the damages it has suffered as a result of a material breach of this Design-Build Agreement by the Design-Builder. It shall be a condition to the right of the Owner to draw on the Letter of Credit under this subsection that: (1) the Owner has given the Design-Builder written notice of a material breach of this Design-Build Agreement, whether or not such breach constitutes an Event of Default, and attached a copy of his or her good faith assessment of the damages the Owner has suffered as a result of such breach; and (2) the Design-Builder has had an opportunity at a meeting scheduled by the Owner to be held not earlier than 15 days nor later than 30 days following delivery of such notice, to present to the Owner evidence disputing the Owner's assertion of breach or assessment of damages. Following any event of voluntary bankruptcy or involuntary bankruptcy by the Design-Builder as described in Section 8.2 (Events of Default by the Design-Builder) or a termination of this Design-Build Agreement pursuant to Section 8.6 (Owner Termination Options During the Design-Build Period), no such notice or meeting shall be required to be given to the Design-Builder, nor shall the giving of such notice or meeting be a condition to the Owner's drawing rights under the Letter of Credit pursuant to this subsection.

(F) Effect of Final Determination of Damages. If subsequent to any drawing on the Letter of Credit it is determined by any final dispute resolution that such drawing to any extent was not permitted hereunder, the Owner shall pay the amount wrongfully drawn to the Design-Builder together with interest thereon at the Base Rate calculated from the date of drawing to the date of payment to the Design-Builder.

SECTION 10.4. COSTS OF PROVIDING SECURITY FOR PERFORMANCE.

The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Design-Builder's obligations hereunder is included in the Fixed Design-Build Price, and shall be borne by the Design-Builder without further reimbursement from the Owner except as such cost and expense may be included in the Fixed Design-Build Price.

ARTICLE 11

MISCELLANEOUS PROVISIONS

SECTION 11.1. OWNERSHIP OF THE DESIGN-BUILD IMPROVEMENTS AND USE OF THE SITE.

The Design-Build Improvements shall be owned by the Owner at all times. The Design-Builder shall perform the Design-Build Work as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Design-Build Improvements. The execution of this Design-Build Agreement shall be deemed to constitute the granting of a license to the Design-Builder to access the Project Site for all purposes of this Design-Build Agreement in accordance with subsection 3.3(C) (Access to the Project Site).

SECTION 11.2. RELATIONSHIP OF THE PARTIES.

The Design-Builder is an independent contractor of the Owner and the relationship between the parties shall be limited to performance of this Design-Build Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Design-Build Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to any party's agent or employee as a result of this Design-Build Agreement or the performance thereof.

SECTION 11.3. CONTRACT ADMINISTRATORS.

(A) Contract Administrators. The Owner and the Design-Builder each shall designate an individual or individuals to administer this Design-Build Agreement and act as their respective liaison's in connection with the Design-Build Work (each a "Contract Administrator"). The Design-Builder understands and agrees that the Owner's Contract Administrator has only limited authority with respect to the implementation of this Design-Build Agreement, and cannot bind the Owner with respect to any Design-Build Agreement Amendment or to incurring costs in excess of the amounts set forth herein. Within such limitations, the Design-Builder shall be entitled to rely on the written directions of the Owner's Contract Administrator. The Owner's Contract Administrator shall have the right at any time to issue the Design-Builder a written request for information relating to this Design-Build Agreement. Any written request designated as a "priority request" shall be responded to by the Design-Builder within three Business Days.

(B) Design-Builder's Senior Supervisors. The Design-Builder shall appoint and inform the Owner from time to time of the identity of the corporate officials of the Design-Builder and the Guarantor with senior supervisory responsibility for the Design-Build Improvements and the performance of this Design-Build Agreement (the "Senior Supervisors"). The Design-Builder shall inform the Owner of the telephone, fax, e-mail address and other means by which the Senior Supervisors may be contacted. The Design-Builder shall promptly notify in writing to the Owner of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the Owner in any reviews of the performance of the Construction Superintendent which the Owner may undertake from time to time, and shall give full consideration to any issues raised by the Owner in conducting such performance reviews.

(C) Owner Approvals and Consents. When this Design-Build Agreement requires any approval or consent by the Owner to a Design-Builder submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) of this Section, be given by the Owner's Contract Administrator in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the Owner with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Design-Build Agreement, and except for requests, reports and submittals made by the Design-Builder that do not, by their terms or the terms of this Design-Build Agreement, require a response or action, if the Owner does not find a request, report or submittal acceptable, it shall provide written response to the Design-Builder describing its objections and the reasons therefor within 30 days of the Owner's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected, and the Design-Builder may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the Owner pursuant to some specific term of this Design-Build Agreement shall be deemed acceptable to the Owner if the Owner shall not have objected thereto within 30 days of the receipt thereof.

SECTION 11.4. DESIGN-BUILD AGREEMENT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of such matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Design-Build Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Design-Build

Agreement between the parties which do not require a Design-Build Agreement Amendment shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, after all preliminary communications have been concluded, to evidence the resolution reached by the Owner and the Design-Builder as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this Design-Build Agreement in particular circumstances or conditions; (2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other similar routine contract administration matters.

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the Owner reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Contract Administrator for each party and by an attorney in the Owner's legal department. The Owner and the Design-Builder each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Design-Build Agreement Amendments and all other documents relating to the administration and performance of this Design-Build Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Design-Build Agreement.

SECTION 11.5. DESIGN-BUILD AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 11.4 (Design-Build Agreement Administration), no change, alteration, revision or modification of the terms and conditions of this Design-Build Agreement shall be made except through a written amendment to this Design-Build Agreement (a "Design-Build Agreement Amendment") duly authorized and executed by the Owner and the Design-Builder.

(B) Procedure. Design-Build Agreement Amendments shall be serially numbered, dated and signed by an authorized representative for each party. The Owner and the Design-Builder each shall maintain a parallel, identical file of all Design-Build Agreement Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Design-Build Agreement.

SECTION 11.6. PROPERTY RIGHTS.

(A) Protection from Infringement. The Design-Builder shall indemnify, defend and hold harmless the Owner Indemnitees in the manner

provided in Section 9.5 (Indemnification by the Design-Builder) from and against any and all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Design-Build Work. At its option, the Design-Builder shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, service life and technical characteristics and development so that such equipment does not so infringe. The provisions of this Section shall survive termination of this Design-Build Agreement.

(B) Intellectual Property Developed by the Design-Builder. All intellectual property developed by the Design-Builder at or through the performance of the Design-Build Work shall be owned by the Design-Builder subject to the terms and conditions of this Section and Section 3.16 (Deliverable Materials), and is hereby licensed to the Owner on a non-exclusive, cost free, perpetual basis for use by the Owner. Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The Owner shall have an irrevocable, perpetual, royalty-free and unrestricted right to use, reuse, reproduce, publish, display, broadcast and distribute such intellectual property, and to prepare derivative and additional documents based on such intellectual property, for any Owner purpose, whether before or following the Termination Date. Neither the Owner nor the Design-Builder shall license, transfer or otherwise make available such intellectual property to any third-party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration. The use by the Owner of any such intellectual property for purposes other than in connection with the Design-Build Improvements shall be at its own risk and the Design-Builder shall have no liability therefor.

SECTION 11.7. INTEREST ON OVERDUE OBLIGATIONS.

If payment of any amount due hereunder is not made when due, simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due under this Design-Build Agreement until paid.

SECTION 11.8. NEGOTIATED FIXED PRICE WORK.

This Design-Build Agreement obligates the Owner to pay for certain costs resulting from Uncontrollable Circumstances, Owner Fault, and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the Owner will pay for such costs on a negotiated, lump sum basis, and that the lump sum price will be negotiated in advance of the Design-Builder's performance of the work. For example, if a Change in Law occurs, as required under Section 9.3 (Uncontrollable Circumstances - Entitlement to

Relief), the parties will assess the impact of the Change in Law, take all appropriate mitigation steps, determine any necessary Design and Construction Requirement Changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Design-Builder shall furnish the Owner with all information reasonably required by the Owner regarding the Design-Builder's expected costs of performing the work and its mark-up, which costs and mark-up must be fair and reasonable but shall not be limited by the provisions set forth in subsection 11.9(E) (Cost Substantiation). Once the parties agree upon the lump sum price, the Design-Builder's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Design-Builder's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 11.9. COST SUBSTANTIATION.

(A) Cost Substantiation Generally. The Design-Builder shall provide Cost Substantiation for the costs for which the Owner is financially responsible hereunder, other than the Fixed Design-Build Price and the costs for which the parties have negotiated a lump sum price, all as and to the extent provided in Section 5.1 (Design-Build Price). In incurring costs which are or may be subject to Cost Substantiation, the Design-Builder shall utilize competitive practices to the maximum reasonable extent (including, where practicable and except with respect to costs of the Design-Builder to which the Fixed Design-Build Price applies, obtaining three competing quotes or estimates for costs expected to be in excess of $50,000, and shall enter into subcontracts on reasonable terms and prices in light of the work to be performed and the Owner's potential obligation to pay for it.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Design-Builder. Examples of costs which require substantiation include (1) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and (2) work done by the Design-Builder under subsection 8.8(B) (Continuity of Service and Technical Support) upon the expiration or termination of this Design-Build Agreement, to the extent such costs are the responsibility of the Owner under subsection 8.8(D) (Owner Payment of Certain Costs). Cost Substantiation shall also be required where the parties agree that the Design-Builder shall perform work on a cost-plus basis, subject to the limitations set forth in subsection (F) of this Section.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Design-Build Agreement under which such cost is chargeable to the Owner, shall describe the competitive or other process utilized by the Design-Builder to obtain the reasonable price, and shall state that such services

and materials are reasonably required pursuant to this Design-Build Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the Owner and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

(1) the amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes;

(2) a statement of the equipment used and any rental payable therefor;

(3) employee hours, duties, wages, salaries, benefits and assessments; and

(4) profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses.

(5) The Owner shall review any Cost Substantiation Certificate, and advise the Design-Builder of its determinations with respect thereto, within 20 days of receipt. The Design-Builder's entitlement to reimbursement of Cost Substantiated costs of the Design-Builder shall be subject to the limitations set forth in this Section.

(D) Technical Services. Design-Builder personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Design-Build Work. The Design-Builder shall use reasonable efforts to use available Design-Builder personnel for additional work hereunder before using Subcontractors.

(E) Mark-Up. On all costs incurred by the Design-Builder for work performed directly by the Design-Builder or any of its Affiliates which are subject to Cost Substantiation, the Design-Builder (or its Affiliates, as applicable) shall be entitled to a mark-up of 10% on its materials and equipment which it purchases that become part of the Design-Build Improvements and the Design-Builder's burdened labor rates, and the Design-Builder shall not be entitled to any other additional compensation. On all costs incurred by the Design-Builder for work performed by Subcontractors, the Design-Builder shall be entitled to a mark-up of 10% for risk, profit, administration, and all other overhead. The mark-up for all Subcontractors that are not Affiliates of the Design-Builder that self-perform work subject to Cost Substantiation, including Subcontractor overhead and mark-ups for risk and profit, shall be equal to ten percent (10%) of materials or equipment that it purchases that become part of

the Design-Build Improvements and its burdened labor rates. No mark-up will be added to the Design-Builder's costs for lodging, meals or travel. Construction Subcontractors similarly will have no mark-ups for costs for their subcontractors' lodging, meals or travel.

(F) Allowable Design-Build Work Costs. All Design-Build Work costs which are subject to Cost Substantiation shall be further subject to the terms, conditions and limitations set forth in Article 5 (Payment of the Design-Build Price).

(G) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs required to be Cost Substantiated, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the Owner, with the request for reimbursement of such costs.

(H) Additional Limitations. In addition to the limitations and requirements included in this Section, the Design-Builder's recoverable costs will be subject to the provisions contained in Appendix 14 (Cost Substantiation).

SECTION 11.10. USE OF SUBCONTRACTORS.

(A) Use Restricted. Subcontractors may be used to perform the Design-Build Work, subject to the Owner's right of review and approval under Section 3.17 (Personnel) and under the Owner's further right of rejection set forth in subsection (B) of this Section.

(B) Owner Review and Rejection of Permitted Subcontractors. Except as provided in the next sentence, the Owner shall have the right, based on the criteria provided below in this Section, to reject any Subcontractors which (1) the Design-Builder is permitted to engage under subsection (A) of this Section for Design-Build Work valued in excess of $500,000, and (2) any substitute for an approved Subcontractor listed in Appendix 10 (Key Personnel and Approved Subcontractors). Owner rejection of Subcontractors as provided in the preceding sentence shall not be applicable to:

(1) Affiliates of the Design-Builder;

(2) Governmental Bodies; and

(3) approved Subcontractors listed in Appendix 10 (Key Personnel and Approved Subcontractors).

(4) The Design-Builder shall furnish the Owner written notice of its intention to engage such Subcontractors, together with all information reasonably requested by the Owner pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas:

(5) qualifications and experience;

(6) any conflicts of interest;

(7) any record of felony criminal convictions or pending felony criminal investigations;

(8) any final judicial or administrative finding or adjudication of illegal employment discrimination;

(9) any unpaid federal, State or local Taxes; and

(10) any final judicial or administrative findings or adjudication of non-performance in contracts with the Owner or the State.

(11) The rejection by the Owner of any proposed Subcontractor shall not create any liability of the Owner to the Design-Builder, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State contracting for any services similar in scope to the Design-Build Work.

(C) Restricted Persons. In providing the Design-Build Work, the Design-Builder shall not contract with, or allow any of the Subcontractors to contract with, any person that, in the reasonable opinion of the Owner, is a Restricted Person.

(D) Subcontract Terms and Subcontractor Actions. The Design-Builder shall retain full responsibility to the Owner under this Design-Build Agreement for all matters related to the Design-Build Work notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by the Design-Builder in connection with the provision of the Design-Build Work shall relieve the Design-Builder from its obligations hereunder to perform the Design-Build Work. The Design-Builder shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Design-Builder or inflicted on the Design-Builder or a Subcontractor by the actions of another Subcontractor.

(E) Indemnity for Subcontractor Claims. The Design-Builder shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the Owner for labor, services, materials or equipment furnished for the Design-Build Work. The Design-Builder acknowledges that its indemnity obligations under Section 9.5 (Indemnification by the Design-Builder) shall include all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Design-Build Work to the extent that those claims fall

within the scope of the indemnity in Section 9.5 (Indemnification by the Design-Builder).

(F) Assignability. All Subcontracts entered into by the Design-Builder with respect to the Design-Build Work shall be assignable to the Owner, solely at the Owner's election and without cost or penalty, upon the termination of this Design-Build Agreement.

SECTION 11.11. LABOR RELATIONS DISPUTES.

(A) Labor Relations. The Design-Builder shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Design-Builder shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Design-Builder and Subcontractors. The Owner shall have no responsibility whatsoever for any such disputes or issues and the Design-Builder shall indemnify, defend and hold harmless the Owner Indemnitees in accordance with Section 9.5 (Indemnification by the Design-Builder) from any and all Loss-and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Design-Builder has knowledge of an actual or potential labor dispute that may affect any of the Design-Build Work, the Design-Builder shall promptly:

(a) Give notice thereof to the Owner, including all relevant information related to the dispute of which the Design-Builder has knowledge; and

(b) Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Design-Build Work including by applying for relief to appropriate tribunals or courts.

The Design-Builder acknowledges that if the labor dispute involves workers of a Subcontractor, or of anyone employed by or through them, the Owner will not be required to provide any facilities, space or assistance in the Design-Build Improvements or on the Project Site for the purposes of such workers or any applicable union.

SECTION 11.12. FAIR EMPLOYMENT AND CONTRACTING POLICY.

(A) Compliance with Owner Non-Discrimination Policy. During the Term, the Design-Builder agrees as follows:

(1) The Design-Builder will not discriminate against any employee, applicant for employment, Subcontractor, guest, visitor or invitee, because of race, religion, creed, color, sex, age (over 40), marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless allowed by Applicable Law as a bona fide occupational qualification. The Design-Builder shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) Subsection (1) of this Section shall be interpreted in a manner that is consistent with the United States Constitution, the State Constitution and applicable State and federal statutes governing workplace discrimination. The terms used in this Section shall have the same meaning as defined in State statutes governing the same subject matter.

(3) Nothing in this Section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable State and federal law and reasonably necessary to the normal operation of Owner employment or contracting. Nothing in this Section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

(4) Nothing in this Section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Owner.

(B) Compliance with Statutes. The Design-Builder agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment and Housing Act, and the Americans with Disabilities Act of 1990, and any State or local laws pertaining to fair employment practices.

(C) Indemnification. The Design-Builder shall indemnify, defend and hold harmless the Owner Indemnitees in the manner provided in Section 9.5 (Indemnification by the Design-Builder) from and against all Loss-and-Expense which any of them may incur arising from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Design-Builder or any of the Design-Builder's officers, employees, agents or Subcontractors. If a discrimination or harassment complaint against the Design-Builder or any of the Design-Builder's officers, employees, agents, or Subcontractors, the Design-Builder shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of an officer, employee, agent or Subcontractor.

(D) WMDVBE Utilization Plan. The Owner has established a combined women, minority and disabled veteran owned business enterprises

("WMDVBE") non-mandatory participation goal for the Design-Build Work of twenty-one and one-half percent (21.5%) of the Design-Build Price in accordance with CPUC General Order 156. To satisfy the this goal, the Design-Builder submitted as part of its proposal a WMDVBE utilization plan which is included in Appendix 16 (WMDVBE Utilization Plan). The WMDVBE utilization plan fully outlines the Design-Builder's commitment to promote and facilitate full participation of certified WMDVBEs. The Design-Builder must comply with such plan and shall monitor and report to the Owner the continued implementation of the WMDVBE Utilization Plan throughout performance of this Design-Build Agreement.

(E) Local Resources Utilization Plan. The Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. The Design-Builder has submitted a local resources utilization plan which is included in Appendix 17 (Local Resources Utilization Plan). The Design-Builder will make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than ____fifty percent ~~[Note: percent to be proposed by Design-Builder and shall not be less than 50%]~~ of the Design-Builder's total construction work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. The Design-Builder must comply with such plan and shall monitor and report the continued implementation of the local resources utilization plan throughout the performance of this Design-Build Agreement.

SECTION 11.13. ASSIGNMENT.

(A) By the Design-Builder. The Design-Builder shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Design-Build Agreement, its right to execute the same, or its right, title or interest in all or any part of this Design-Build Agreement or any monies due hereunder whatsoever prior to their payment to the Design-Builder, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the Owner. Any such consent given in one instance shall not relieve the Design-Builder of its obligation to obtain the prior written approval of the Owner to any further assignment. Any such assignment of this Design-Build Agreement which is approved by the Owner shall require the assignee of the Design-Builder to assume the performance of and observe all obligations, representations and warranties of the Design-Builder under this Design-Build Agreement, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term hereof. The approval of any assignment, transfer or conveyance shall not operate to release the Design-Builder in any way from any

of its obligations under this Design-Build Agreement unless such approval specifically provides otherwise.

(B) By the Owner. The Owner shall have the right to assign its rights or obligations under this Design-Build Agreement to an Affiliate without the consent of the Design-Builder. The Owner shall not assign its rights or obligations under this Design-Build Agreement to a non-Affiliate without the consent of the Design-Builder, which consent shall not be unreasonably withheld.

SECTION 11.14. CONFIDENTIALITY.

(A) Confidential Nature of Information. The Design-Builder shall treat all information obtained from the Owner in the performance of this Design-Build Agreement as confidential and proprietary to the Owner.

(B) Limitation on Use and Disclosure. The Design-Builder shall not use any information obtained as a consequence of the performance of the Design-Build Work for any purpose other than fulfillment of the Design-Builder's scope of work. The Design-Builder shall not disclose any information obtained from the Owner or obtained as a consequence of the performance of the Design-Build Work to any person other than its own employees, agents or Subcontractors who have a need for the information for the performance of work under this Design-Build Agreement, unless such disclosure is specifically authorized in writing by the Owner.

(C) Security Plan. If requested by the Owner, the Design-Builder shall prepare a security plan to assure that information obtained from the Owner or as a consequence of the performance of the Design-Build Work is not used for any unauthorized purpose or disclosed to unauthorized persons. The Design-Builder shall advise the Owner of any request for disclosure of information or of any actual or potential disclosure of information.

SECTION 11.15. BINDING EFFECT.

This Design-Build Agreement shall inure to the benefit of and shall be binding upon the Owner and the Design-Builder and any assignee acquiring an interest hereunder consistent with Section 11.13 (Assignment).

SECTION 11.16. NOTICES.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Design-Build Agreement shall be signed by the notifying party's Contract Administrator, and shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by email or facsimile transmission, if a signed original is

deposited in the United States Mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) Owner Notice Address. Notices required to be given to the Owner shall be addressed as follows:

California American Water
511 Forest Lodge Road
Suite 100
Pacific Grove, CA 93950
Attn: Corporate Counsel

with a copy to:

California American Water
1033 B Avenue
Suite 200
Coronado, CA 92118
Attn: Vice President, Legal-Operations

(C) Owner's Representative Notice Address. Notices required to be given to the Owner's Representative shall be sent to the Owner's Representative address provided from time to time by the Owner to the Design-Builder, with a copy to the Owner at the address provided in subsection (B) of this Section.

(D) Design-Builder Notice Address. Notices required to be given to the Design-Builder shall be addressed as follows:

~~[DESIGN-BUILDER NAME AND ADDRESS]~~
~~Attn: _____~~
CDM Constructors Inc.
100 Pringle Avenue, Suite 300
Walnut Creek, CA 94596
Attn: Paul Meyerhofer
Telephone No.: ~~_____~~(925) 296-8191
Facsimile No.: ~~_____~~(925) 933-4174
E-mail Address:
~~_____~~meyerhoferpf@cdmsmith.com

with a copy to:

~~[DESIGN-BUILDER GENERAL COUNSEL NAME AND ADDRESS]~~
~~Attn: _____~~
CDM Smith Inc.
50 Hampshire Street
Cambridge, MA 02139
Attn: Patrick Gallagher
Telephone No.: ~~_____~~(617) 452 - 6068
Facsimile No.: ~~_____~~(617) 452 - 8000
E-mail Address:
~~_____~~gallagherpe@cdmsmith.com

SECTION 11.17. NOTICE OF LITIGATION.

If the Design-Builder or Owner receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Design-Build Work or the Design-Build Improvements, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 11.18. FURTHER ASSURANCES.

The Owner and Design-Builder each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Design-Build Agreement. The Owner and the Design-Builder, in order to carry out this Design-Build Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Design-Build Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Design-Build Agreement to be executed by their duly authorized representatives as of the day and year first above written.

CALIFORNIA-AMERICAN WATER COMPANY	~~[DESIGN-BUILDER]~~CDM CONSTRUCTORS INC.
By: _____	By: _____
Name: _____ Printed	Name: _____ Printed
Title: _____	Title: _____
	[Design-Builder Seal]
ATTEST:	ATTEST:
_____ [Owner Secretary]	_____ Printed Name: _____

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TRANSACTION FORMS

TO THE
DESIGN-BUILD AGREEMENT
FOR THE
MONTEREY PENINSULA WATER SUPPLY PROJECT
DESALINATION INFRASTRUCTURE

between

CALIFORNIA-AMERICAN WATER COMPANY

and

~~[DESIGN-BUILDER]~~
CDM CONSTRUCTORS INC.

Dated as of

~~_____, 2013~~
December 20, 2013

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TRANSACTION FORM A

FORM OF GUARANTY AGREEMENT

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GUARANTY AGREEMENT

from

~~[GUARANTOR]~~
CDM SMITH INC.

to

CALIFORNIA-AMERICAN WATER COMPANY

Dated as of

~~_____, 2013~~

December 20, 2013

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of ~~[_____]~~December 20, ~~2012~~2013, between ~~[_____], a [_____]~~CDM Smith Inc., a corporation organized and existing under the laws of the State of ~~[_____]~~Massachusetts (together with any permitted successors and assigns hereunder, the "Guarantor"), and California-American Water Company, a corporation organized and existing under and by virtue of the laws of the State of California (the "Owner").

RECITALS

The Owner and ~~[_____], a [_____]~~CDM Constructors Inc., a corporation organized and existing under the laws of the State of ~~[_____]~~Massachusetts (the "Design-Builder"), have entered into a Design-Build Agreement for the Monterey Peninsula Water Supply Project Desalination Infrastructure Project, dated as of ~~[_____]~~December 20, 2013, as amended from time to time (the "Design-Build Agreement"), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, start up, commission, and acceptance test certain desalination infrastructure improvements, all as more particularly described therein.

The Guarantor is the parent company of the Design-Builder ~~is [an indirect subsidiary] of the Guarantor~~.

Performance by the Owner and the Design-Builder of their obligations under the Design-Build Agreement will result in a direct and substantial benefit to the Guarantor.

The Owner will enter into the Design-Build Agreement only if, concurrently with its execution and delivery by the Design-Builder, the Guarantor guarantees the performance by the Design-Builder of all of the Design-Builder's Obligations under the Design-Build Agreement as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the Design-Build Agreement by the Owner and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Design-Build Agreement.

"Obligations" means the amounts payable by, and the covenants and agreements of, the Design-Builder pursuant to the terms of the Design-Build Agreement.

"Transaction Agreement" means any agreement entered into by the Design-Builder or the Owner in connection with the transactions contemplated by the Design-Build Agreement, including the Design-Build Agreement, and any supplements thereto.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the Owner and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR. The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of ~~[_____]~~Massachusetts, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. This Guaranty has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to the Owner, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Design-Build Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE OWNER. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the Owner for the benefit of the Owner (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Design-Builder under the Design-Build Agreement (including all amendments and supplements thereto) to, or for the account of, the Owner, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty and the Guarantor's liability under this Guaranty shall not exceed the Design-Builder's liability under the Design-Build Agreement (except if the Design-Builder files for bankruptcy or similar liability limiting procedures).

SECTION 3.2. RIGHT OF OWNER TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that if a failure by the Design-Builder to pay or perform any Obligation guaranteed hereunder, the Owner shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Design-Builder or exhausting any other remedies against the Design-Builder which the Owner may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the Owner: (1) file suit or proceed to obtain a personal judgment against the Design-Builder or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Design-Builder other than providing the Design-Builder with any notice of such payment or performance as may be required by the terms of the Design-Build Agreement or required to be given to the Design-Builder under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the Owner is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Design-Builder or to the enforcement of remedies under the Design-Build Agreement. Upon any unexcused failure by the Design-Builder in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Design-Builder and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed, and in no instance, longer than three Business Days after such notice or demand. Notwithstanding the Owner's right to proceed directly against

the Guarantor, the Owner (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Design-Builder shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Design-Builder, the Owner or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

(1) the extension or renewal of this Guaranty or the Design-Build Agreement up to the specified Terms of each agreement;

(2) any exercise or failure, omission or delay by the Owner in the exercise of any right, power or remedy conferred on the Owner with respect to this Guaranty or the Design-Build Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) any permitted transfer or assignment of rights or obligations under the Design-Build Agreement or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Design-Build Improvements or in, to or under any of the Transaction Agreements;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the Owner or any other person in any Transaction Agreement or in the Design-Build Improvements;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Project Site or the Design-Build Improvements;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Design-Builder or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Section 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Design-Builder now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Design-Builder;

(9) any failure on the part of the Design-Builder for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the Owner to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Design-Builder as a condition to the enforcement of Obligations pursuant to the Design-Build Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Design-Builder or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Design-Builder or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Design-Builder pursuant to the terms of the Design-Build Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Design-Builder's rights, benefits, duties or obligations under the Design-Build Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Design-Builder's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Design-Builder may have under the Design-Build Agreement or under Applicable Law (other than bankruptcy or insolvency of the Design-Builder and other than any defense which the Design-Builder has expressly waived in the Design-Build Agreement or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Design-Builder is permitted to assert pursuant to the Design-Build Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

(1) notice from the Owner of its acceptance of this Guaranty;

(2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;

(3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Design-Builder required pursuant to the Design-Build Agreement or Applicable Law as a condition to the performance of any Obligation;

(4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(5) any right to require a proceeding first against the Design-Builder;

(6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Design-Builder) or security;

(7) any requirement that the Design-Builder be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by the Owner if the receivership or bankruptcy of the Design-Builder; and

(9) all demands upon the Design-Builder or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the Owner on demand all Fees and Costs, incurred by or on behalf of the Owner in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the Owner incurs in performing any of its obligations under the Design-Build Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Design-Builder of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Design-Builder as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the Owner hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Design-Builder until the Design-Builder and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the Owner. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Design-Builder is rescinded or must be otherwise restored by the Owner, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Design-Build Agreement, or any applicable Transaction Agreement or the Design-Builder's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Design-Builder have been fully paid and performed.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of California, and (b) delivers to the Owner an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT.

Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of the Owner.

SECTION 4.3. CONSENT TO JURISDICTION.

The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State

courts located in Monterey County, California or in federal courts located in the Northern District of California, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT.

This Guaranty shall inure to the benefit of the Owner and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS.

This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the Owner and the Guarantor.

SECTION 4.7. LIABILITY.

It is understood and agreed to by the Owner that nothing contained herein shall create any obligation of, or right to look to, any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES.

(A) Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) Owner Notice Address. Notices required to be given to the Owner shall be addressed as follows:

California American Water
511 Forest Lodge Road
Suite 100
Pacific Grove, CA 93950
Attn: Corporate Counsel

with a copy to:

California American Water
1033 B Avenue
Suite 200
Coronado, CA 92118
Attn: Vice President, Legal-Operations

(C) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

CDM Smith Inc.
~~[GUARANTOR]~~50 Hampshire Street
~~[ADDRESS]~~
Cambridge, MA 02139
Attn: _____
Telephone No.:
_____
Facsimile No.: _____

with a copy to:

CDM Smith Inc.
~~[GUARANTOR]~~50 Hampshire Street
~~[ADDRESS]~~
Cambridge, MA 02139
Attn: _____
Telephone No.:
_____
Facsimile No.: _____

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

~~[GUARANTOR]~~CDM SMITH INC., as Guarantor

By: _____

Name: _____
Printed

Title: _____

ACCEPTED AND AGREED TO BY:

[Guarantor Seal]

CALIFORNIA-AMERICAN WATER COMPANY

By:
_____

Name:
_____
Printed

Title:
_____

ATTEST:

_____
Secretary

~~APPROVED AS TO FORM:~~

_____

_____

~~Vice President, Legal-Operations~~

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TRANSACTION FORM B

FORM OF PAYMENT BOND FOR LABOR AND MATERIALS

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FORM OF PAYMENT BOND FOR MATERIALS AND LABOR

KNOW ALL PERSONS BY THESE PRESENTS:

That we, CDM Constructors Inc., hereinafter referred to as "Design-Builder", as principal, and Fidelity and Deposit Company of Maryland / Zurich American Insurance Company, as surety, are held and firmly bound unto California-American Water Company (the "Owner"), in the sum of eighty-six million, nine hundred eighty-four thousand, five hundred forty-four dollars and sixty-five cents ($86,984,544.65) lawful money of United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and is about to enter into the annexed Design-Build Agreement with the Owner for the Monterey Peninsula Water Supply Project Desalination Infrastructure Project, dated as of December 20, 2013, as amended from time to time (the "Design-Build Agreement"), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, start up, commission, and acceptance test certain desalination infrastructure improvements, all as more particularly described therein, and is required by the Owner to give this bond in connection with the execution of said Design-Build Agreement;

NOW, THEREFORE, if Design-Builder, or its subcontractors, fails to pay any of the persons referred to in Section 3181 of the Civil Code of the State of California for any materials, provisions, provender, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the principal and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the surety will pay for the same, in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, reasonable attorneys' fees, to be fixed by the court. This bond shall inure to the benefit of any and all persons entitled to file claims under Section 3181 of the Civil Code of the State of California so as to give a right action to them or their assigns in any suit brought upon this bond.

Any alterations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of the Design-Build Agreement, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-

Build Agreement release either Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Agreement is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

The address or addresses at which the principal and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following: _____ _____ _____.

WITNESS our hands this _____ day of _____, 2013.

(Seal) ~~Design-Builder~~CDM Constructors Inc.

By_____

_____
Title

~~Surety~~Fidelity and Deposit Company of Maryland / Zurich American Insurance Company

(Surety's Corporate Seal)

By_____

_____
Title

_____
Address of Surety

_____

_____

Approved:

_____
[Title]
California-American Water Company

~~Approved as to form and execution:~~

~~_____~~
~~Vice President, Legal-Operations~~
~~California-American Water Company~~

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC
[Cal. Civ. Code, § 1189]

State of California)
County of)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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TRANSACTION FORM C

FORM OF PERFORMANCE BOND

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FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, ____CDM Constructors Inc., hereinafter referred to as "Design-Builder", as principal, and ____Fidelity and Deposit Company of Maryland / Zurich American Insurance Company, as surety, are held and firmly bound unto California-American Water Company (the "Owner"), in the sum of ____eighty-six million, nine hundred eighty-four thousand, five hundred forty-four dollars and sixty-five cents ($____86,984,544.65) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and is about to enter into the annexed Design-Build Agreement with the Owner for the Monterey Peninsula Water Supply Project Desalination Infrastructure Project, dated as of ____December 20, 2013, as amended from time to time (the "Design-Build Agreement"), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, start up, commission, and acceptance test, certain desalination infrastructure improvements, all as more particularly described therein, and is required by the Owner to give this bond in connection with the execution of said Design-Build Agreement

NOW, THEREFORE, if the Design-Builder, its heirs, executors, administrators, successors, and assigns shall well and truly do and perform all of the covenants and obligations of the Design-Build Agreement and any alteration thereof made as therein provided, on its part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect inclusive of any period of any guarantees or warranties required under the Design-Build Agreement.

Any alterations in the work to be done or the material to be furnished, which may be made pursuant to the terms of the Design-Build Agreement, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-Build Agreement release either the Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Agreement is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances),

2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

If suit is brought upon this bond by the Owner and judgment is recovered, the surety shall pay all costs incurred by the Owner in such suit, including, but not limited to, reasonable attorneys' fees and administrative and consultant costs to be fixed by the court.

The address or addresses at which the principal and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following:
_____
_____
_____.

WITNESS our hands this _____ day of _____, 2013.

(Seal)

~~Design-Builder~~CDM Constructors Inc.

By_____

_____
Title

~~Surety~~Fidelity and Deposit Company o Maryland / Zurich American Insurance Company

(Surety's Corporate Seal)

By_____

_____
Title

_____
Address of Surety

_____

_____

Approved:

_____
[Title]
California-American Water Company

~~Approved as to form and execution:~~

_____
~~Vice President, Legal-Operations~~
~~California-American Water Company~~

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC
Cal. Civ. Code, § 1189

State of California)
County of)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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TRANSACTION AGREEMENT FORM D

FORM OF LETTER OF CREDIT

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TRANSACTION AGREEMENT FORM D

FORM OF LETTER OF CREDIT

~~_____~~ __, 2013

[Address]

Ladies and Gentlemen:

1. At the request and for the account of ~~_____, a _____ [~~CDM Constructors Inc., a Massachusetts corporation~~]~~ (the "Company"), ~~[Name of Bank]~~ of America (the "Bank") hereby establishes in your favor our irrevocable Letter of Credit No. ___ (the "Letter of Credit"), in the amount of ~~[$____,000,000.00]~~1,000,000.00 (the "Stated Amount"), effective immediately. We are informed by the applicant that this Letter of Credit is representing amounts payable to you by the Company under and pursuant to the Design-Build Agreement for the Monterey Peninsula Water Supply Project Desalination Infrastructure, dated [December 20, 2013], between the Company and you (the "Design-Build Agreement").

2. We hereby irrevocably authorize you to draw drafts on us at sight in accordance with the terms and conditions hereinafter set forth. The aggregate amount drawn hereunder shall not exceed the Stated Amount.

3. Unless extended by the Bank, this Letter of Credit will expire on _____, __ and any expiration date extended by the Bank in writing (the "Stated Termination Date").

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us of your sight draft, accompanied by: (i) your written and completed certificate, signed by you, in substantially the form of Annex A hereto (such certificate being your "Agreement Certificate"), in an amount not exceeding the Stated Amount, ~~representing amounts payable to you by the Company under and pursuant to the Design-Build Agreement for the Monterey Peninsula Water Supply Project Desalination Infrastructure, dated _____, ____, between the Company and you (the "Design-Build Agreement")~~; or (ii) your written and completed certificate, signed by you in substantially the form of Annex B hereto (such certificate being your "Final Certificate"), in an amount not exceeding the Stated Amount representing the maximum amount available to be drawn hereunder upon the termination of this Letter of Credit.

5. Each sight draft drawn under this Letter of Credit must bear on its face the clause "Drawn under Irrevocable Letter of Credit No. ___."

6. Demand for payment may be made by you under this Letter of Credit prior to the expiration hereof at any time during the Bank's business hours at its address at ~~[Bank's Address]~~1000 W. Temple Street, 7th Floor, CA 9-705-07-05, Los Angeles, CA 90012-1514 Attention: Standby Letter of Credit, on a Business Day (as hereinafter defined). As used herein the term "Business Day" means any day other than (I) a Saturday or Sunday, (II) a day on which banking institutions in the City of New York, New York are required or authorized by law to close, or (III) a day on which the ~~Bank at our aforesaid office is opened for the purpose of conducting commercial banking business~~New York Stock Exchange is closed. PRESENTATION OF DRAFTS DRAWN HEREUNDER MAY ALSO BE MADE VIA FACSIMILE TO 800-755-8743 (IF PRESENTED BY FAX IT MUST BE FOLLOWED UP BY A PHONE CALL TO US AT 800-370-7519 TO CONFIRM RECEIPT). ANY SUCH FACSIMILE DOCUMENTATION SHALL NOT REQUIRE PRESENTATION OF THE ORIGINAL DOCUMENTATION BY MAIL. We hereby agree that all sight drafts drawn under and in strict conformity with the terms of this Letter of Credit will be duly honored by us upon delivery of the sight drafts and certificates. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit, at our aforesaid office not later than ~~11~~10:00 A.M. (~~local~~Pacific Time) on a Business Day on or before the Stated Termination Date hereof, we will honor the same by 3:00 P.M. (~~local~~Pacific Time) on the next Business Day in accordance with your payment instructions. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit at such office after ~~11~~10:00 A.M. (~~local~~Pacific Time) on a Business Day, on or before the Stated Termination Date hereof, we will honor the same not later than 1:00 P.M. (~~local~~Pacific Time) on the ~~next~~ succeeding Business Day in accordance with your payment instructions. If requested by you, payment under this Letter of Credit may be made by Federal Reserve Wire Transfer of funds to your account in a bank on the Federal Reserve Wire Facility or by deposit of same day funds into a designated account that you maintain with us.

7. The Stated Amount shall be reduced automatically by the amount of each drawing hereunder.

8. This letter of credit is transferable in ~~its entirety (but~~full and not in part~~) to your successor which you certify to us has succeeded you as beneficiary and may be successively so transferred. Transfer of this Letter of Credit to such transferee shall be effected upon the presentation to us of this Letter of Credit accompanied by a certificate in the form of Annex C attached hereto. All changes in connection with any transfer of this Letter of Credit are for the Company's account.~~. Any transfer made hereunder must conform strictly to the terms hereof and to the conditions of Rule 6 of ISP98, as defined. Should you wish to effect a transfer under this credit, such transfer will be subject to the return to us of the original credit instrument, accompanied by our form of transfer, properly completed and signed by an authorized signatory of your firm, bearing your bankers stamp and signature authentication and payment of our transfer fee. Such transfer form is available upon request.

9. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Design-Build Agreement) or to which this Letter of Credit relates, except for the certificates and sight drafts referred to herein which are incorporated herein by reference; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such sight drafts.

10. Only you (or a transferee as provided in paragraph 8 hereof) may make a drawing under this Letter of Credit. Upon the payment to you or your account of the amount specified in a sight draft drawn hereunder, we shall be fully discharged of our obligation under this Letter of Credit with regard to that payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with regard to that payment to you.

11. This Letter of Credit shall be governed by the International Standby Practices 1998, International Chamber of Commerce Publication 590 (~~the~~ '~~UCPISP~~ISP98") and, to the extent not inconsistent with the ISP98, the Uniform Commercial Code in effect in the State of California. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at our address at ~~[Bank Address]~~1000 W. Temple Street, 7th Floor, CA 9-705-07-05, Los Angeles, CA 90012-1514 Attention: Standby Letter of Credit, specifically referring to the number of this Letter of Credit.

Very truly yours,
~~[Name of~~ Bank~~]~~ of America

By:_____
Authorized Officer

ANNEX A TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING
IN CONNECTION WITH
PAYMENT OF AMOUNTS
UNDER THE SERVICE CONTRACT

Irrevocable Letter of Credit No. __

The undersigned, a duly authorized ~~representative~~signatory of California-American Water Company (the "Beneficiary"), hereby certifies to ~~[Name of Bank]~~ of America (the "Bank"), with reference to Irrevocable Letter of Credit No. ____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to the Design-Build Agreement for the Monterey Peninsula Water Supply Project Desalination Infrastructure, dated ~~_____, _____~~[December 20, 2013] (the "Design-Build Agreement") by and between the Beneficiary and _____ (the "Company") regarding the design, construction, starting up, acceptance testing and obtaining governmental approvals for the Project in the City of Monterey, California.

2. The Commencement Date has occurred.

3. The Beneficiary is making a demand for payment under the Letter of Credit in the amount of $_____ and such amount does not exceed the Stated Amount.

4. The Beneficiary hereby certifies as follows (insert those which are applicable):

(a) The Company has materially breached the Design-Build Agreement and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(b) The Beneficiary has terminated the Design-Build Agreement pursuant to Section 10.3 of the Design-Build Agreement in accordance with the procedures and requirements of such Section, Section 10.3 and the other applicable provisions of the Design-Build Agreement. The Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(c) The Letter of Credit will expire within 30 days, and the Letter of Credit has not been extended, renewed or replaced in accordance with Section 10.3 of the Design-Build Agreement.

(d) The Company or any Guarantor has filed a petition of voluntary bankruptcy under the Bankruptcy Code, the Company or any Guarantor has consented to the filing of any bankruptcy or reorganization petition against the Company or any Guarantor, or the Company or any Guarantor has filed a petition to reorganize the Company or any Guarantor pursuant to the Bankruptcy Code, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(e) A court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Company or any Guarantor or of a major part of the Company's or any Guarantor's property, respectively, or a petition to reorganize the Company of any Guarantor pursuant to the Bankruptcy Code has been filed against the Company or any Guarantor, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

5. Payment of the amount described hereby shall be made by wire transfer to the following account: [wire transfer instructions].

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized ~~representative~~signatory as of this ___ day of _____, 20__.

CALIFORNIA-AMERICAN WATER COMPANY

By:_____
Title:_____

ANNEX B TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING
IN CONNECTION WITH
THE TERMINATION OF
THE LETTER OF CREDIT

Irrevocable Letter of Credit No. __

The undersigned, a duly authorized ~~representative~~signatory of California-American Water Company (the "Beneficiary"), hereby certifies to ~~[Name of Bank]~~ of America (the "Bank"), with reference to Irrevocable Letter of Credit No. ____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Letter of Credit expires at the close of business on _____, _____ (the "Stated Termination Date"), which date is not more than 30 days after the date on which this certificate and accompanying sight draft are being presented.

2. The Beneficiary has not received written notice of an extension of the Stated Termination Date.

3. The amount of the sight draft accompanying this certificate does not exceed the Stated Amount of the Letter of Credit.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized ~~representative~~signatory as of this ___ day of _____, ___.

CALIFORNIA-AMERICAN WATER COMPANY

By:_____
Title:_____

ANNEX C TO LETTER OF CREDIT

TRANSFER CERTIFICATE

[Bank's Address]

Attention: _____

RE: Irrevocable Letter of Credit No. _

Ladies and Gentlemen:

For value received, the undersigned Beneficiary hereby irrevocably transfers to:

[Name of Transferee]

[Address of Transferee]

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole right as the Beneficiary thereof, including sole rights to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

Such transferee is a permitted transferee under such Letter of Credit.

The Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

SIGNATURE AUTHENTICATED CALIFORNIA-AMERICAN WATER COMPANY

_____,

(Bank)

(Authorized Officer)

By: _____

Title:_____
__

REFERENCE DOCUMENT 1
ENVIRONMENTAL MITIGATION MEASURES

~~REFERENCE DOCUMENT 2~~

~~FORM OF CWSRF LOAN AGREEMENT~~

Summary Report: Litera Change-Pro ML 6.5.0.313 Document Comparison done on 12/5/2013 10:10:16 PM	
Style Name: B&W	
Original Filename:	
Original DMS:iw://EASTDMS/EAST1/1255773/10	
Modified Filename:	
Modified DMS: iw://EASTDMS/EAST1/1255773/17	
Changes:	
Add	622
~~Delete~~	443
~~Move From~~	0
Move To	0
Table Insert	9
~~Table Delete~~	3
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Total Changes:	1077