EXHIBIT G-1

QUANTICO DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

EXHIBIT G-1

QUANTICO DESIGN/BUILD AGREEMENT

By and Between

Hunt Lincoln Clark Family Communities LLC

and

[redacted] as Design/Builder

Dated as of October 1, 2003

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LIST OF EXHIBITS

QUANTICO DESIGN/BUILD AGREEMENT

This Quantico Design/Build Agreement (this "Agreement") dated as of October 1, 2003 and effective for all purposes as of October 1, 2003 (the "Effective Date"), is by and between Hunt Lincoln Clark Family Communities LLC, a Delaware limited liability company (the "Company") and (
(the "Design/Builder").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **"Affiliate"** means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.2 **"Agreement"** means this Quantico Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.3 **"Applicable Laws"** means all laws (including, without limitation, the Davis Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.4 **"Application for Payment"** means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.5 **"Architect"** means

1.6 **"Authorized Representatives"** means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.7 **"Certificate of Substantial Completion"** means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Work or applicable portion thereof is Substantially Complete.

1.8 **"Certificate of Final Completion"** means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Project or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.9 **"Change Directive"** means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.10 **"Change Order"** means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. The Schedule may be changed only by Change Order.

1.11 **"Change Proposal"** means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.12 **"Civil Engineer"** means

1.13 **"Company Event of Default"** shall have the meaning set forth in Section 12.3 hereof.

1.14 **"Company Indemnified Parties"** means the Company, its members, agents, partners and employees.

1.15 **"Construction Agreement"** means that certain Quantico Construction Agreement between the Contractor and the Design/Builder dated as of October 1, 2003, as amended and modified from time to time.

.

1.17 **"Construction Consultant"** shall have the meaning set forth in the Operating Agreement.

1.18 **"Construction Documents"** means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Plans and Specifications must be approved by the Company prior to incorporation into this Agreement.

1.19 **"Construction Notice to Proceed"** means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.20 **"Construction Phase"** means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.21 **"Construction Work"** means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.22 **"Contract Documents"** means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.23 **"Contract Time"** means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.24 **"Contractor"** means [redacted].

1.25 **"Contingency"** shall have the meaning set forth in Section 5.17.

1.26 **"Cost of the Work"** consists of those items of Work which are paid for by the Company to the Design/Builder, and consist of those categories of costs set forth as allowable on Exhibit D. [redacted]

1.27 **"CPM"** means a critical path method schedule in the form of precedents, networks and time sequences.

1.28 **"Credit Provider"** shall have the meaning as set forth in the Operating Agreement.

1.29 **"Day"** or **"Days"** means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "Business Day" or "Business Days" means Days other than weekend, national or local holidays in which federal or state government agencies in the Commonwealth of Virginia are open for business.

1.30 **"Design/Builder"** means [redacted]

1.31 **"Design/Builder Event of Default"** shall have the meaning set forth in Section 12.1 hereof.

1.32 **"Design/Builder Indemnified Parties"** means the Design/Builder, Contractor and the Architect and its and their partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.33 **"Design Group"** means all architects and engineers having a contract with the Design/Builder to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.34 **"Design Materials"** means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.35 **"Design Phase"** means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.36 **"Design Work"** means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.37 **"Environmental Documents"** means the environmental documents listed on Exhibit C.

1.38 **"Excusable Delay"** shall have the meaning set forth in Section 4.6.1 hereof.

1.39 **"Fee"** means the fee payable to the Design/Builder, which is [redacted]

1.40 **"Final Completion" or "Finally Complete"** means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.41 **"Force Majeure"** means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), extreme weather conditions, material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the Design/Builder.

1.43 **"Governmental Approvals"** means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.44 **"Hazardous Materials"** means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq. ("CERCLA"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. ss 6901 et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "Environmental Laws");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. Section 6991.

1.45 **"Inexcusable Delay"** shall have the meaning set forth in Section 4.6.1.

1.46 **"Landscaping Work"** shall have the meaning set forth in Exhibit A.

1.47 **"Liquidated Damages"** shall have the meaning set forth in Section 4.6.4.

1.48 **"Managing Member"** means , which is the managing member of the Company.

1.49 **"Modification"** means an amendment to this Agreement executed by the Parties after the Effective Date.

1.50 **"Notice to Begin Design"** means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.51 **"Operating Agreement"** means that certain Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2003.

1.52 **"Order of Magnitude Documents"** means the drawings, specifications and other documents prepared for the Design/Builder by the Architect for the Company's review and approval prior to the preparation of the Construction Documents, as more particularly specified in Exhibit J hereto. The Order of Magnitude Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.53 **"Overhead"** means home office overhead costs of the Design/Builder payable to the Design/Builder, .

1.54 **"Party"** or **"Parties"** means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.55 **"Payment and Performance Bonds"** means the payment bond and performance bonds issued by the Surety, in the form set forth on Exhibit N, covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor, as required under the Construction Agreement.

1.56 **"Pendleton Design/Build Agreement"** means the Pendleton Design/Build Agreement dated as of October 1, 2003, between the Company and and all amendments and/or modifications thereof.

1.57 "**Phases**" means the construction phases of the Project described in Exhibit "G," as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Construction Agreement are initially included as alternates under the Construction Agreement and will be incorporated into the Construction Agreement by change order prior to the commencement of each such Phase.

1.58 "**Project**" means the facilities to be known as Quantico Family Housing, Quantico, Virginia, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.59 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.60 "**Rehabilitation Work**" shall mean the rehabilitation of existing residential units as more fully described in Exhibit A.

1.61 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.62

1.63 "**Schedule**" means the schedule attached hereto as Exhibit H. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.64 "**Scheduled Date of Substantial Completion**" means those dates the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.65 "**Separate Contractors**" means those individuals or entities (other than the Team Subcontractors) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.66 "**Site**" is the real property on which the Project will be located, which is more fully described on Exhibit I hereto, and any other real property on which the Work will be performed.

1.67 "**Subcontract**" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work.

1.68 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.69 **"Substantial Completion"** or **"Substantially Complete"** means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.70 **"Surety"** means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.71 **"Team Subcontract"** means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement.

1.72 **"Team Subcontractors"** means the Contractor and the Architect.

1.73 **"Trustee"** shall have the meaning set forth in the Operating Agreement.

1.74 **"United States Member"** means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.75 **"Work"** or **"Scope of Work"** means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work, Rehabilitation Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the date(s) of Substantial Completion set forth in the Schedule attached as Exhibit H, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 Professional Standard

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder hereby assigns outright and exclusively to the Company all copyrights in the design appearance of the Project. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims from such for claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "Claims") (a) arising from any use by the Company, its successors or assigns of such Design Materials if the Design/Build Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of Design/Builder.

2.4 Local Conditions; Environmental Site Conditions

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed

conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Project characterization reports listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Business Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all existing above and below grade structures in the Scope of Work including the removal of any Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design Builder or Affiliates in the above grade structures.

The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the RFP or known as of the Effective Date by the Design/Builder or Affiliates Project characterization reports listed on Exhibit C, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place. Any other Hazardous Materials besides the ones specifically identified in this Section are not included in the Scope of Work.

2.5 Order of Magnitude Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Order of Magnitude Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Order of Magnitude Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Order of Magnitude Documents and the Construction Documents shall

be conducted in accordance with the durations and procedures set forth in Exhibits H and J hereto, and in acc [redacted] not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the durations and procedures set forth in Exhibits H and J hereto.

2.6 Legal Requirements.

2.6.1 The Design/Builder shall:

2.6.1.1 Comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between local laws, codes, ordinances, rules, regulations and orders and this Agreement or the Contract Documents, the Design/Builder is required to comply with local laws, codes, ordinances, rules, regulations and orders, but the Design/Builder shall be entitled to a Change Order adjusting t [redacted] Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Company's Construction Consultant and the Company for review. T [redacted] To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the

Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than the Contractor.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder

shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the RFP and the Offer (as each is defined in the Operating Agreement) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Rehabilitation Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Rehabilitation Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the RFP and the Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or

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

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the RFP and the Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion of such building or group of buildings. If within after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work.

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to

establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Omitted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct it in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time, the Company may remove it and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within [redacted] Days after written notice, the Company may, upon [redacted] additional Business Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1.

2.8.9 Acceptance of Work. If the Company prefers to accept Construction Work, Rehabilitation Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may instead of requiring its reperformance, [redacted] If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be Cost of the Work.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Project Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Site.

The Design/Builder shall prepare a Mobilization Plan, prior to the start of each phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company. The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in the schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor ; provided however, if the Design/Builder has reason to believe that the

design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is an change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 **"Product Data"** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 **"Samples"** are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and ROICC (Resident Officer in Charge of Construction) timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and

required correction shall be paid as a Cost of the Work.

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made

payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond such liens within [redacted] Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond such liens within such [redacted] Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may bond such liens and charge the cost of the bond and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching site utilities, materials, or other site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule [redacted].

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company [redacted] An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design/Builder shall pay such costs as a Cost of the Work, unless such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to

the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results

by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 **Claims Involving Separate Contractors.** The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be Cost of the Work. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work.

3.2.7 **Damage or Injury by Separate Contractors.** In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architect's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

[redacted],

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within [redacted] Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such [redacted] ay period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a [redacted] Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such [redacted] Day period give the Design/Builder a second written notice to correct such deficiencies within such [redacted] Day period. If the Design/Builder within such [redacted] Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion Dates for each building. The dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within [redacted] Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for each Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay").

4.6.1.1 Failure or inability of the Company to make available any or all of the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company to or the Design Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental

authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute

resolution procedures results in the Company's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Company

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the scheduled date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages in an amount

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION:

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement the

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (to include the United States Member) have agreed upon the schedule of values shown in Exhibit E. which set forth the various portions of the Work, a This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later thar Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing withir Days of receipt, which notice shall set forth in detail those items

disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on each Phase shall be withheld until the Phase is complete; thereafter, no further Retainage will be withheld on that Phase. No Retainage shall be withheld on account of Overhead, Fee, general conditions payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents (as defined in the Operating Agreement), Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, less of the value of any uncompleted Work or Punch list items relating to such building. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary

consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section

5.9.2 shall bear interest at the rate o[redacted] from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within [redacted] Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon [redacted] additional Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule [redacted] hall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of [redacted]

5.11 Substantial Completion.

When the Design/Builder considers that a building is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later tha[redacted] lays after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the

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

5.13 *Final Completion and Final Payment.*

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building or phase of the Project is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building or phase and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building or phase, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and

marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

uch Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. After Final Completion of the Pendleton Project, any unused "Contingency" under the Pendleton Design/Build Agreement shall be available for use as Contingency by Design/Builder under this Agreement, subject to the First Mortgage Loan Documents. After Final Completion of the Work, any unused Contingency under this Agreement shall be available for the Pendleton Design/Builder as "Contingency", under the Pendleton Design/Build Agreement and if not needed by the Pendleton Design/Builder, to the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in this Agreement, subject to the First Mortgage Loan Documents. Notwithstanding the foregoing (1) reduction in the line item amounts for Landscape, Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

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6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of [redacted] must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within [redacted] Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved [redacted]. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in the [redacted] Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. [redacted] When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedule [redacted] such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in th Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on account of Change Orders and/or Excusable Delays.

6.5.1.3

6.5.2 **Design Work.** For Change Orders including additional Design Work,

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6.5.2.2 st

6.5.2.3

6.5.3 **Decreased Scope.** With respect to Change Orders which decrease the Scope of Work described on Exhibit A, o y

6.6 Changes on Account of Delay in Commencement of Work.

6.7

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of each building, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Architect pursuant to which the Design/Builder shall delegate the design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities

contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("Self-Performed Work"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds prior to, and as a condition precedent to, commencement of the Construction Work on the Site. The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, the Trustee, and the Credit Provider as co-obligees, Prior to the commencement of the Work on any Alternate, the Surety that issued the Payment Bond and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment Bond and Performance Bond. The Payment and Performance Bonds shall be in the forms set forth as Exhibit N-1 hereto, and shall be issued by the Surety. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the

Construction Agreement. All payment and performance bonds provided pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company, the Trustee and the Credit Provider as co-obligees and shall be in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be provided by the Surety. All other payment and performance bonds shall be provided by sureties that appear on the approved list of sureties issued by the United States Department of Treasury. The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 **The Company's Property.** As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("OSHA").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Section 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4).

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site whose full-time duty shall be the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger its safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and

measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after [redacted] Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such [redacted] Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth

herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within f Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved withir Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties withir Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

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During such t Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration

involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

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

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 ***Termination of Agreement.*** Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon

Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

The following shall be considered "Company Events of Default":

12.3.1 if the Work is stopped for a period of Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents; or

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the

Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If an Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within [redacted] Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible [redacted] Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the Commonwealth of Virginia, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Contract and the Contact Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents and Second Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Department of the Navy,
Southwest Division, Naval Facilities
Engineering Command
1220 Pacific Highway
San Diego, CA 92132
Attention: Contracting Officer
Reference: Camp Pendleton/Quantico PPV

and

Naval Facilities Engineering Command
1322 Patterson Avenue, SE
Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Attention: Special Venture Acquisitions Department

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual

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

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in good faith to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Design/Builder's Consent and Assignment Agreement.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until [redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

HUNT LINCOLN CLARK FAMILY COMMUNITIES LLC, a Delaware limited liability company

[Signature Page to Quantico Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN/BUILDER:

[Signature Page to Quantico Design/Build Agreement (Page 2 of 2)]

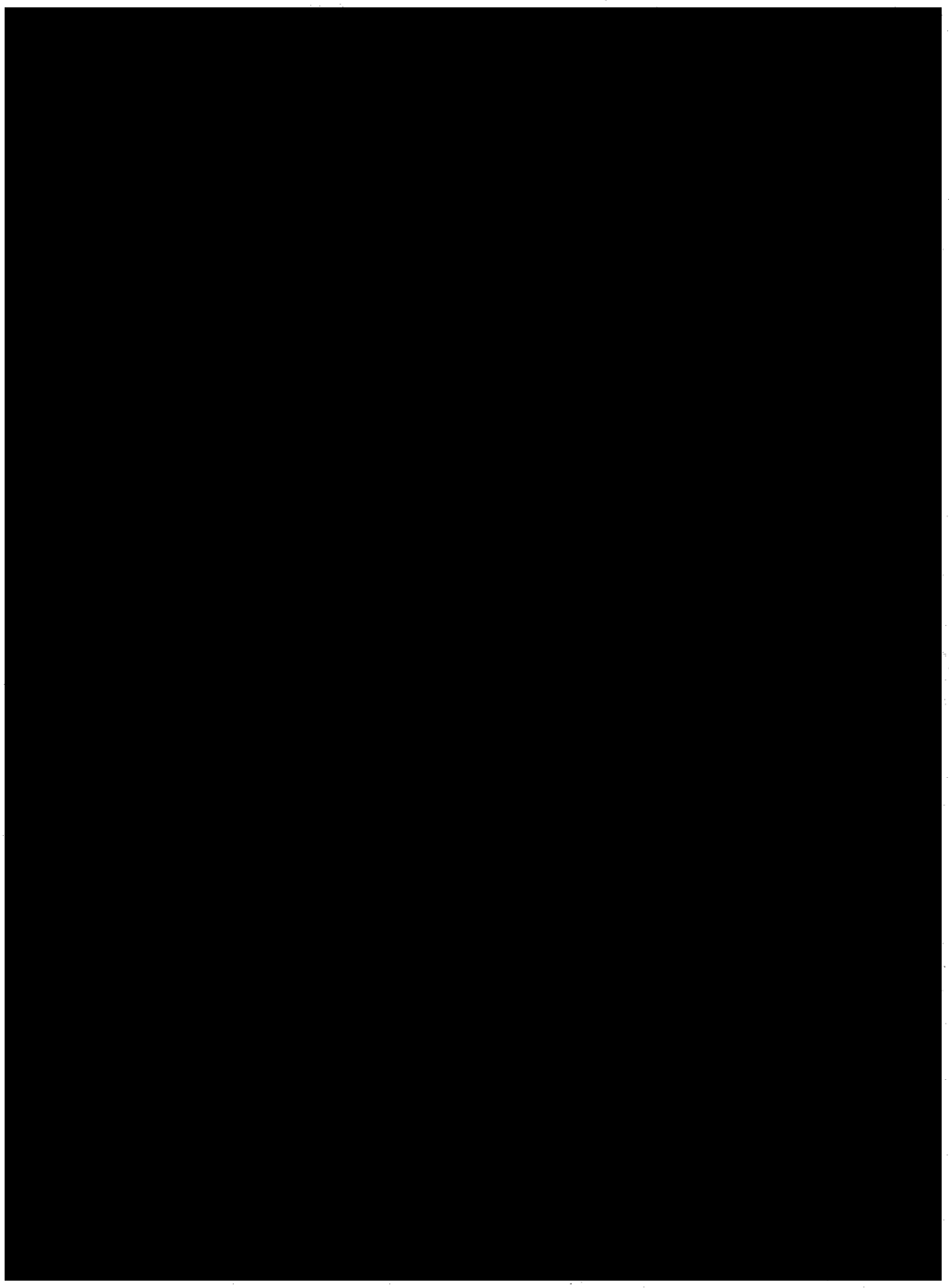
LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Company Governmental Approvals
Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Designation of Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance

EXHIBIT A

SCOPE OF WORK

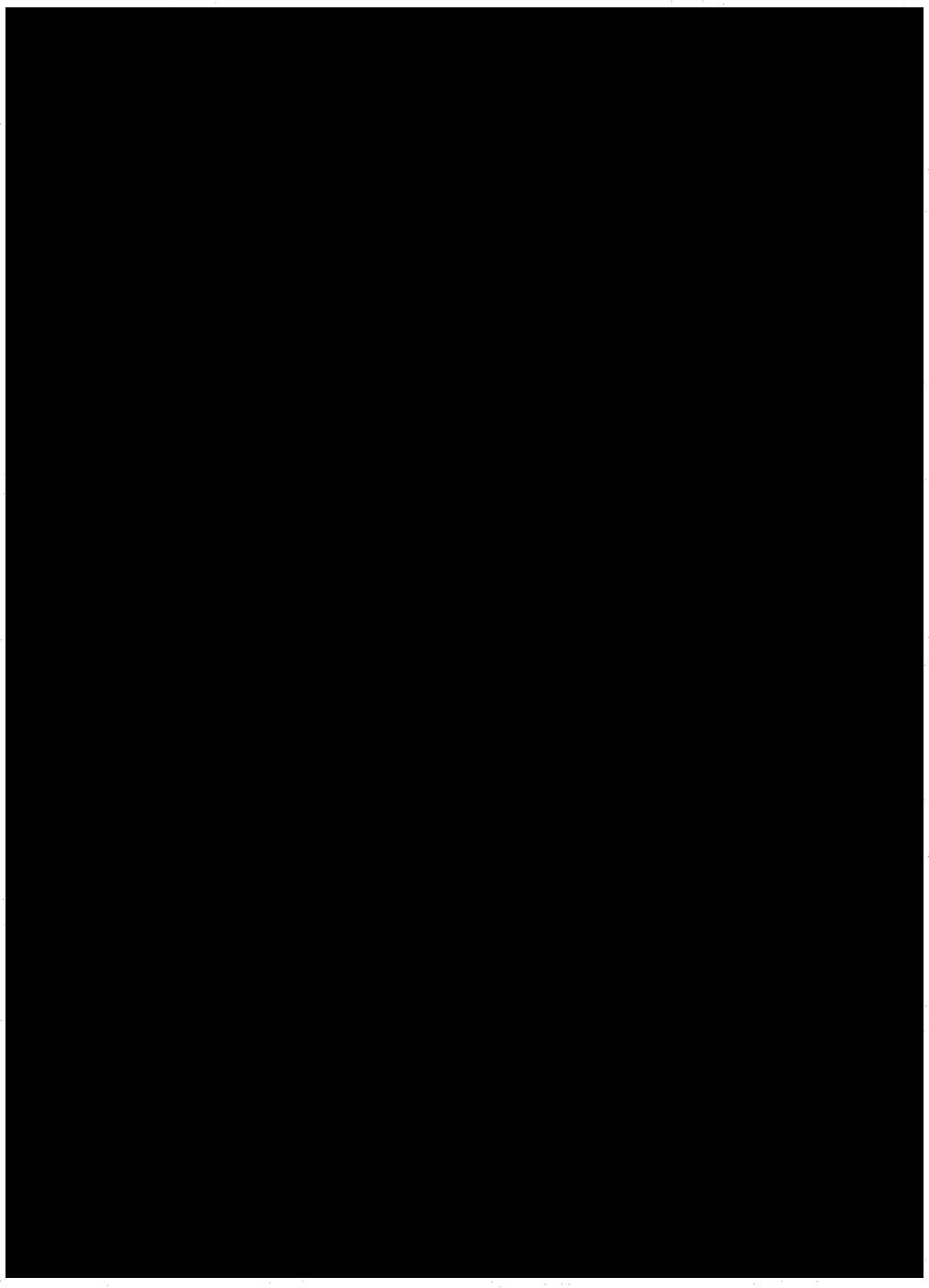
[redacted]



Exh. A-3

[redacted]

Exh. A-4



Exh. A-5

[redacted]

Exh. A-6

Exh. A-7

Exh. A-8

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

General Decision Number VA020056 Davis-Bacon Wage Determination	May 03, 2002
Phase 1 Environmental Site Assessment [redacted]	July 25, 2003
Asbestos/Hazardous Materials Building Survey to Facilitate Demolitions [redacted]	August 14, 2003
Letter RE: Construction Activities Near Bald Eagle Nest, #2890, Prince William County, Virginia Fish and Wildlife Services	June 11, 2003
Demo of Housing Units (e-mail) Marlene Baker	June 18, 2003
Environmental Baseline Survey. Quantico Marine Corps Base Housing Areas, Quantico, Virginia ERM, Inc.	August 13, 2002
Environmental Assessment Ecology and Environment, Inc.	July 2002
Boring Logs WH-1 Through Wh-4, 2B-1 Through 2B-1, 3B-1 Through 2B-3, and N-1 Through N-6	May 28-May 30, 2003
Boring Logs TP-1 Through TP-10	June 3-June 5, 2003
Boring Logs L1-L28	July 10-July 14, 2003
Technical Specifications Quantico MCB Family Housing, Quantico, VA	September 25, 2003

Exh. C-3

Exh. C-5

Exh. C-6

Exh. C-7

EXHIBIT D

COST OF THE WORK

Exh. D-2

Exh. D-3

Exh. D-4

Exh. D-5

EXHIBIT E

Exh. E-2

Exh. E-3

EXHIBIT F

COMPANY GOVERNMENT APPROVALS

The following constitute the regulatory approvals for which the Company is responsible.

3rd Party Plan Review:

The Company shall secure approval of Civil and Architectural documents for code compliance and permitting. The 3rd Party Plan Reviewer shall perform the functions normally provided by the local municipality related to code compliance and permitting.

3rd Party Inspections: The Company shall commission the services of a 3rd party inspection agency to perform inspection services. This 3rd party inspection agency shall perform the inspection functions normally performed by the local municipality related to building and trade inspections, final inspections, and certificates of occupancy.

Department of the Navy:

Obtain written approval of all plans and specifications from the Navy. Plans and Specifications will be submitted in accordance with Exhibit J of this Agreement.

Air Quality Approvals:

Procure air quality permits from authorities having jurisdiction as required to meet all local, state, and federal air quality standards.

Utilities:

The Company is responsible for all dealings with service providers for delivery of electric, gas, telephone, CATV, IT, sanitary sewer, and water services to the dwelling units including service agreements and easements without cost to the Design Builder. The D/B has included the cost of wet utility design (storm, sanitary, and water). The Company shall be responsible for the design of the dry utilities (power, gas, telephone, CATV, IT). The Company is also responsible for the coordination of the dry utility design with the service providers and for securing the service providers approval of the dry utility design.

SHPO Approvals:

The Company is responsible for negotiating the Programmatic Agreement, coordinating SHPO requirements, and securing approval from SHPO for the work of this Agreement.

VDOT:

To the extent that VDOT has jurisdiction on any portion of the work, the Company is responsible to identify the affected work, determine the requirements, coordinate with VDOT, and obtain VDOT approval for work performed under this Agreement.

Wetlands:

The Company is responsible for establishing the extent of wetlands within project limits. The Company is also responsible for obtaining approvals from the governing authority for the work to be performed pursuant to this Agreement that may impact wetlands.

National Capital Planning Commission:

The Company is responsible to obtain any permits or approvals required from the National Capital Planning Commission.

Group Approvals:

Currently there are no known required approvals from citizen groups, associations, etc. However, should such approvals be required the Company shall obtain all necessary approvals from citizen groups, associations, etc. such as the Peninsula Planning Association.

Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the sites, such approvals shall be the responsibility of the Company.

EXHIBIT G

PROJECT PHASES

Exh. G-1

Exh. G-2

Exh. H-2

Exh. H-3

Exh. H-4

EXHIBIT I

SITE DESCRIPTION

All that certain piece or parcel of land, together with the improvements thereon and appurtenances thereunto belonging, lying, situate and being in the County of Prince William, State of Virginia, being a portion of Marine Corps Base Quantico as set out in Proclamation dated November 4th, 1918, instrument No. 1493 and being more particularly described as follows:

PARCEL 1:

DESCRIPTION OF THOMASON PARK
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 82° 15' 59" W A DISTANCE OF 2,520.71 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 30° 46' 52" E A DISTANCE OF160.66 FEET TO A SET IRON PIPE;
THENCE, N 69° 54' 31" E A DISTANCE OF 211.08 FEET TO A POINT;
THENCE, S 20° 33' 40" E A DISTANCE OF 271.12 FEET TO A POINT;
THENCE, S 73° 03' 26" W A DISTANCE OF 317.72 FEET TO A POINT;
THENCE, S 25° 43' 01" W A DISTANCE OF 298.45 FEET TO A POINT;
THENCE, S 11° 16' 51" E A DISTANCE OF 352.16 FEET TO A POINT;
THENCE, S 16° 57' 23" W A DISTANCE OF 511.50 FEET TO A POINT;
THENCE, S 80° 53' 10" W A DISTANCE OF 300.87 FEET TO A POINT;
THENCE, N 62° 41' 05" W A DISTANCE OF 179.80 FEET TO A POINT;
THENCE, N 62° 05' 45" W A DISTANCE OF 480.88 FEET TO A POINT;
THENCE, N 61° 49' 08" W A DISTANCE OF 222.60 FEET TO A POINT;
THENCE, N 44° 54' 34" W A DISTANCE OF 164.02 FEET TO A POINT;
THENCE, N 31° 04' 51" W A DISTANCE OF 395.37 FEET TO A POINT;
THENCE, N 62° 01' 19" W A DISTANCE OF 333.93 FEET TO A POINT;
THENCE, N 60° 56' 28" W A DISTANCE OF 241.26 FEET TO A POINT;
THENCE, N 84° 45' 03" E A DISTANCE OF 300.00 FEET TO A POINT;
THENCE, N 46° 57' 01" E A DISTANCE OF 184.63 FEET TO A POINT;
THENCE, N 88° 17' 27" E A DISTANCE OF 355.23 FEET TO A SET IRON PIPE;
THENCE, N 15° 19' 18" E A DISTANCE OF 500.00 FEET TO A SET IRON PIPE;

THENCE, N 58° 30′ 56″ E A DISTANCE OF 200.00 FEET TO A POINT;
THENCE, S 55° 17′ 31″ E A DISTANCE OF 282.08 FEET TO A POINT;
THENCE, N 69° 54′ 18″ E A DISTANCE OF 238.61 FEET TO A POINT;
THENCE, N 41° 58′ 25″ E A DISTANCE OF 150.02 FEET TO A POINT;
THENCE, S 49° 19′ 24″ E A DISTANCE OF 224.17 FEET TO A POINT;
THENCE, S 35° 07′ 45″ W A DISTANCE OF 292.81 FEET TO A POINT;
THENCE, S 06° 42′ 58″ W A DISTANCE OF 353.82 FEET TO A POINT;
THENCE, S 48° 52′ 13″ W A DISTANCE OF 215.35 FEET TO A POINT;
THENCE, S 23° 28′ 05″ E A DISTANCE OF 217.65 FEET TO A POINT;
THENCE, S 63° 38′ 37″ E A DISTANCE OF 162.67 FEET TO A POINT;
THENCE, N 84° 10′ 59″ E A DISTANCE OF 114.59 FEET TO A POINT;
THENCE, N 33° 45′ 30″ E A DISTANCE OF 320.20 FEET TO A POINT;
THENCE, N 66° 24′ 34″ E A DISTANCE OF 505.15 FEET TO THE POINT OF BEGINNING AND CONTANING 2,521,774 SQUARE FEET OR 57.8920 ACRES OF LAND MORE OR LESS.

PARCEL 2:

DESCRIPTION OF LYMAN PARK
LEASE AREA LP-A
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 71° 47′ 42″ W A DISTANCE OF 6,555.90 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 01° 23′ 36″ E A DISTANCE OF 259.94 FEET TO A POINT;
THENCE, N 88° 42′ 15″ W A DISTANCE OF 232.14 FEET TO A POINT;
THENCE, S 79° 56′ 50″ W A DISTANCE OF 154.12 FEET TO A POINT;
THENCE, S 61° 41′ 45″ W A DISTANCE OF 164.38 FEET TO A POINT;
THENCE, S 40° 48′ 35″ W A DISTANCE OF 160.76 FEET TO A POINT;
THENCE, N 53° 07′ 20″ W A DISTANCE OF 197.17 FEET TO A SET IRON PIPE;
THENCE, N 36° 39′ 52″ E A DISTANCE OF 557.21 FEET TO A SET IRON PIPE;
THENCE, S 77° 54′ 04″ E A DISTANCE OF 171.50 FEET TO A SET IRON PIPE;
THENCE, S 80° 23′ 14″ E A DISTANCE OF 288.66 FEET TO THE POINT of BEGINNING AND CONTINUING 225,301 SQUARE FEET OR 5.1722 ACRES OF LAND MORE OR LESS.

PARCEL 3:

DESCRIPTION OF LYMAN PARK
LEASE AREA LP-B
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 60° 12′ 48″ W A DISTANCE OF 5,919.40 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 86° 19′ 23″ W A DISTANCE OF 526.11 FEET TO A SET IRON PIPE;
THENCE, N 18° 33′ 56″ W A DISTANCE OF 476.12 FEET TO A POINT;
THENCE, N 87° 32′ 34″ W A DISTANCE OF 242.75 FEET TO A POINT;
THENCE, S 02° 27′ 42″ E A DISTANCE OF 228.94 FEET TO A POINT;
THENCE, S 31° 24′ 49″ W A DISTANCE OF 339.98 FEET TO A POINT;
THENCE, S 05° 07′ 45″ E A DISTANCE OF 373.93 FEET TO A POINT;
THENCE, S 25° 33′ 02″ W A DISTANCE OF 477.02 FEET TO A POINT;
THENCE, S 58° 12′ 10″ E A DISTANCE OF 310.00 FEET TO A POINT;
THENCE, S 29° 18′ 29″ E A DISTANCE OF 445.00 FEET TO A POINT;
THENCE, S 26° 26′ 48″ W A DISTANCE OF 318.10 FEET TO A POINT;
THENCE, S 59° 51′ 27″ W A DISTANCE OF 261.91 FEET TO A POINT;
THENCE, N 73° 26′ 42″ W A DISTANCE OF 427.29 FEET TO A POINT;
THENCE, S 40° 44′ 23″ W A DISTANCE OF 157.88 FEET TO A POINT;
THENCE, S 49° 15′ 37″ E A DISTANCE OF 253.63 FEET TO A POINT;
THENCE, S 18° 48′ 34″ E A DISTANCE OF 443.09 FEET TO A POINT;
THENCE, S 69° 31′ 18″ W A DISTANCE OF 130.37 FEET TO A POINT;
THENCE, S 25° 41′ 59″ E A DISTANCE OF 144.04 FEET TO A POINT;
THENCE, S 72° 38′ 22″ W A DISTANCE OF 508.19 FEET TO A POINT;
THENCE, S 07° 43′ 55″ W A DISTANCE OF 894.57 FEET TO A POINT;
THENCE, S 01° 14′ 38″ W A DISTANCE OF 293.37 FEET TO A POINT;
THENCE, S 49° 02′ 49″ E A DISTANCE OF 514.53 FEET TO A POINT;
THENCE, S 75° 56′ 30″ E A DISTANCE OF 396.93 FEET TO A POINT;
THENCE, S 48° 33′ 34″ E A DISTANCE OF 362.86 FEET TO A POINT;
THENCE, S 34° 48′ 36″ W A DISTANCE OF 327.14 FEET TO A POINT;
THENCE, N 80° 14′ 35″ W A DISTANCE OF 173.04 FEET TO A POINT;
THENCE, S 65° 43′ 28″ W A DISTANCE OF 371.34 FEET TO A POINT;
THENCE, S 48° 28′ 22″ W A DISTANCE OF 228.40 FEET TO A POINT;
THENCE, ON AND ALONG LYMAN PARK, LEASE AREA LP-C THE FOLLOWING THREE (3) COURSES:

THENCE, N 60° 25′ 15″ W A DISTANCE OF 290.29 FEET TO A SET IRON PIPE;
THENCE, N 15° 21′ 38″ W A DISTANCE OF 659.42 FEET TO A SET IRON PIPE;
THENCE, N 74° 17′ 39″ W A DISTANCE OF 134.52 FEET TO A POINT;
THENCE, DEPARTING SAID LYMAN PARK, LEASE AREA LP-C, N 23° 14′ 06″ E A DISTANCE OF 144.10 FEET TO A POINT;
THENCE, N 16° 51′ 52″ E A DISTANCE OF 119.80 FEET TO A POINT;
THENCE, N 06° 25′ 54″ E A DISTANCE OF 178.41 FEET TO A POINT;
THENCE, N 07° 54′ 19″ W A DISTANCE OF 179.21 FEET TO A POINT;
THENCE, N 12° 14′ 42″ W A DISTANCE OF 545.82 FEET TO A POINT;
THENCE, N 04° 48′ 25″ W A DISTANCE OF 119.29 FEET TO A POINT;
THENCE, N 00° 24′ 39″ W A DISTANCE OF 309.70 FEET TO A POINT;
THENCE, N 08° 38′ 19″ E A DISTANCE OF 224.71 FEET TO A POINT;
THENCE, N 13° 13′ 02″ E A DISTANCE OF 269.37 FEET TO A POINT;
THENCE, N 10° 53′ 11″ E A DISTANCE OF 600.02 FEET TO A POINT;
THENCE, N 19° 05′ 22″ E A DISTANCE OF 412.82 FEET TO A POINT;
THENCE, N 21° 44′ 40″ E A DISTANCE OF 329.44 FEET TO A POINT;
THENCE, N 15° 15′ 40″ E A DISTANCE OF 362.18 FEET TO A POINT;
THENCE, N 07° 05′ 04″ E A DISTANCE OF 510.26 FEET TO A POINT;
THENCE, N 10° 17′ 09″ E A DISTANCE OF 453.37 FEET TO A POINT;
THENCE, N 25° 32′ 18″ E A DISTANCE OF 165.00 FEET TO A POINT;
THENCE, N 47° 51′ 31″ E A DISTANCE OF 111.58 FEET TO A POINT;
THENCE, N 64° 39′ 02″ E A DISTANCE OF 132.00 FEET TO A POINT;
THENCE, N 78° 36′ 13″ E A DISTANCE OF 99.30 FEET TO A POINT;
THENCE, N 88° 07′ 39″ E A DISTANCE OF 120.74 FEET TO A POINT;
THENCE, S 88° 50′ 45″ E A DISTANCE OF 233.99 FEET TO A POINT;
THENCE, S 88° 59′ 41″ E A DISTANCE OF 326.88 FEET TO A POINT;
THENCE, N 81° 12′ 18″ E A DISTANCE OF 132.38 FEET TO A POINT;
THENCE, N 72° 14′ 48″ E A DISTANCE OF 188.82 FEET TO A POINT;
THENCE, N 74° 45′ 19″ E A DISTANCE OF 108.62 FEET TO A POINT;
THENCE, N 87° 51′ 01″ E A DISTANCE OF107.92 FEET TO A POINT;
THENCE, S 80° 53′ 39″ E A DISTANCE OF 87.58 FEET TO A POINT;
THENCE, S 03° 58′ 57″ E A DISTANCE OF 674.41 FEET TO THE POINT OF BEGINNING AND CONTAINING 4,773,556 SQUARE FEET OR 109.5858 ACRES OF LAND MORE OR LESS.

PARCEL 4:

DESCRIPTION OF LYMAN PARK
LEASE AREA LP-C
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 39° 24' 29" W A DISTANCE OF 10,886.10 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 40° 24' 45" W A DISTANCE OF 189.08 FEET TO A SET IRON PIPE;
THENCE, N 68° 06' 35" W A DISTANCE OF 469.46 FEET TO A POINT;
THENCE, N 44° 48' 19" W A DISTANCE OF 77.29 FEET TO A POINT;
THENCE, N 00° 00' 00" W A DISTANCE OF 955.82 FEET TO A POINT;
THENCE, N 10° 14' 28" E A DISTANCE OF 77.44 FEET TO A POINT A CORNER
TO LYMAN PARK LEASE AREA LP-B;
THENCE, ON AND ALONG SAID LYMAN PARK, LEASE AREA LP-B THE FOLLOWING THREE (3) COURSES:
THENCE, S 74° 17' 39" E A DISTANCE OF 134.52 FEET TO A SET IRON PIPE;
THENCE, S 15° 21' 38" E A DISTANCE OF 659.42 FEET TO A SET IRON PIPE;
THENCE, S 60° 25' 15" E A DISTANCE OF 290.29 FEET TO A POINT;
THENCE, DEPARTING SAID LYMAN PARK, LEASE AREA LP-B, S 07° 57' 21" E A DISTANCE OF 305.29 FEET TO THE POINT OFBEGINNING AND CONTAINING 397,797 SQUARE FEET OR 9.1322 ACRES OF LAND MORE OR LESS.

PARCEL 5:

DESCRIPTION OF LYMAN PARK
LEASE AREA LP-D
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 60° 31' 00" W A DISTANCE OF 8,310.60 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 20° 46' 01" W A DISTANCE OF 279.16 FEET TO A POINT;
THENCE, S 15° 40' 45" W A DISTANCE OF 209.64 FEET TO A POINT;
THENCE, S 14° 10' 22" W A DISTANCE OF 215.96 FEET TO A POINT;
THENCE, S 10° 10' 03" W A DISTANCE OF 516.09 FEET TO A POINT;
THENCE, S 11° 50' 23" W A DISTANCE OF 270.07 FEET TO A POINT;
THENCE, S 07° 35' 50" W A DISTANCE OF 177.57 FEET TO A POINT;
THENCE, S 09° 23' 30" W A DISTANCE OF 127.63 FEET TO A POINT;
THENCE, S 01° 10' 35" W A DISTANC EOF 121.72 FEET TO A POINT;
THENCE, S 88° 47' 13" W A DISTANCE OF 225.97 FEET TO A POINT;
THENCE, S 01° 12' 47" E A DISTANCE OF 40.00 FEET TO A POINT;
THENCE, S 72° 39' 58" W A DISTANCE OF 266.59 FEET TO A POINT;
THENCE, N 40° 03' 14" W A DISTANCE OF 444.39 FEET TO A POINT;
THENCE, S 49° 56' 42" W A DISTANCE OF 630.00 FEET TO A POINT;
THENCE, S 38° 24' 28" W A DISTANCE OF 250.00 FEET TO A POINT;
THENCE, S 61° 51' 23" W A DISTANCE OF 242.25 FEET TO A POINT;
THENCE, N 84° 30' 32" W A DISTANCE OF 250.74 FEET TO A SET IRON PIPE;
THENCE, N 03° 07' 42" E A DISTANCE OF 699.31 FEET TO A SET IRON PIPE ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S.ROUTE 1;
THENCE,ON AND ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE OF U.S. ROUTE 1, N 36° 24' 10" E A DISTANCE OF 2,622.57 FEET TO A SET IRON PIPE;
THENCE, S 55° 21' 52" E A DISTANCE OF 818.60 FEET TO THE POINT OF BEGINNING AND CONTAINING 3,208,050 SQUARE FEET OR 73.6467 ACRES OF LAND MORE OR LESS.

PARCEL 6:

DESCRIPTION OF 300 BLOCK
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 11° 13' 36" E A DISTANCE OF 5,921.61 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, N 83° 38'45" E A DISTANCE OF 177.42 FEET TO A POINT;
THENCE, S 58° 35' 17" E A DISTANCE OF 210.00 FEET TO A POINT;
THENCE, S 30° 33' 03" W A DISTANCE OF 134.43 FEET TO A POINT;
THENCE, S 59° 26' 57" E A DISTANCE OF 416.19 FEET TO A POINT;
THENCE, N 69° 46' 50" E A DISTANCE OF 436.01 FEET TO A POINT;
THENCE, S 79° 00' 50" E A DISTANCE OF 271.21 FEET TO A POINT;
THENCE, S 26° 04' 52" E A DISTANCE OF 184.16 FEET TO A POINT;
THENCE, LEFT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 196.14 FEET, A RADIUS OF 124.57 FEET, A TANGENT OF 125.04 FEET, A DELTA OF 90° 13' 00" AND HAVING A CHORD BEARING AND DISTANCE OF S06° 05' 54" W- 176.50 FEET TO A POINT;
THENCE, S 37° 45' 44" W A DISTANCE OF 147.06 FEET TO A SET IRON PIPE;
THENCE, N 90° 00' 00" W A DISTANCE OF 308.69 FEET TO A SET IRON PIPE;
THENCE, S 33° 31' 04" W A DISTANCE OF 208.62 FEET TO A POINT;
THENCE, S 87° 29' 04" W A DISTANCE OF 372.30 FEET TO A POINT;
THENCE, S 00° 27' 37" E A DISTANCE OF 294.16 FEET TO A POINT;
THENCE, S 86° 51' 35" W A DISTANCE OF 308.51 FEET TO A POINT;
THENCE, N 03° 27' 57" W A DISTANCE OF 675.97 FEET TO A POINT;
THENCE, N 54° 35' 52" W A DISTANCE OF 313.98 FEET TO A POINT;
THENCE, N 33° 48' 19" E A DISTANCE OF 103.58 FEET TO A POINT;
THENCE, N 53° 39' 01" W A DISTANCE OF 204.84 FEET TO A SET IRON PIPE;
THENCE, N 36° 20' 59" E A DISTANCE OF 275.68 FEET TO THE POINT OF BEGINNING AND CONTAINING 970,550 SQUARE FEET OR 22.2808 ACRES OF LAND MORE OR LESS.

PARCEL 7:

DESCRIPTION OF GEIGER RIDGE
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 57° 37' 35" E A DISTANCE OF 6,685.78 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, N 71° 52' 35" E A DISTANCE OF 177.31 FEET TO A SET IRON PIPE;
THENCE, N 30° 51' 32" E A DISTANCE OF 319.26 FEET TO A POINT;
THENCE, S 65° 08' 20" E A DISTANCE OF 92.97 FEET TO A POINT;
THENCE, N 30° 51' 32" E A DISTANCE OF 195.46 FEET TO A POINT;
THENCE, S 65° 08' 20" E A DISTANCE OF 587.40 FEET TO A POINT;
THENCE, N 08° 42' 49" E A DISTANCE OF 216.66 FEET TO A POINT;
THENCE, N 68° 34' 58" E A DISTANCE OF 161.83 FEET TO A POINT;
THENCE, S 26° 11' 51" E A DISTANCE OF 278.19 FEET TO A POINT;
THENCE, S 39° 02' 13" E A DISTANCE OF 135.00 FEET TO A POINT;
THENCE, N 36° 10' 54" E A DISTANCE OF 355.95 FEET TO A POINT;
THENCE, N 84° 30' 14" E A DISTANCE OF 233.03 FEET TO A POINT;
THENCE, N 00° 35' 52" W A DISTANCE OF 334.58 FEET TO A POINT;
THENCE, N 76° 31' 50" E A DISTANCE OF 191.63 FEET TO A SET IRON PIPE;
THENCE, S 16° 34' 19" E A DISTANCE OF 352.53 FEET TO A SET IRON PIPE;
THENCE, S 36° 23' 29" E A DISTANCE OF 298.08 FEET TO A POINT;
THENCE, S 38° 55' 02" W A DISTANCE OF 197.52 FEET TO A POINT;
THENCE, S 82° 40' 32" W A DISTANCE OF 364.52 FEET TO A POINT;
THENCE, S 54° 16' 12" W A DISTANCE OF 389.90 FEET TO A POINT;
THENCE, N 82° 59' 33" W A DISTANCE OF 464.41 FEET TO A POINT;
THENCE, N 68° 00' 27" W A DISTANCE OF 304.12 FEET TO A POINT;
THENCE, S 54° 40' 43" W A DISTANCE OF 527.25 FEET TO A POINT;
THENCE, S 71° 52' 35" W A DISTANCE OF 250.00 FEET TO A SET IRON PIPE;
THENCE, N 18° 07' 25" W A DISTANCE OF 420.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,106.784 SQUARE FEET OR 25.4083 ACRES OF LAND MORE OR LESS.

PARCEL 8:

DESCRIPTION OF NEVILLE ROAD
LEASE AREA NR-A
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 39° 46′ 52″ E A DISTANCE OF 7,559.36 TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, N 55° 05′ 04″ E A DISTANCE OF 198.30 FEET TO A POINT;
THENCE, N 80° 25′ 39″ E A DISTANCE OF 285.04 FEET TO A POINT;
THENCE, S 79° 49′ 30″ E A DISTANCE OF 161.91 FEET TO A POINT;
THENCE, S 15° 18′ 57″ W A DISTANCE OF 122.58 FEET TO A POINT;
THENCE, S 68° 34′ 38″ E A DISTANCE OF 104.59 FEET TO A POINT;
THENCE, LEFT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 353.06 FEET, A RADIUS OF 192.91 FEET, A TANGENT OF 250.78′, A DELTA OF 104° 51′ 46″ AND HAVING A CHORD BEARING AND DISTANCE OF N 73° 15′ 27″ E – 305.80 FEET TO A POINT;
THENCE, N 22° 29′ 12″ W A DISTANCE OF 164.09 FEET TO A POINT;
THENCE, RIGHT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 546.38 FEET, A RADIUS OF 380.90 FEET, A TANGENT OF 332.21 FEET, A DELTA OF 82° 11′ 19″ AND HAVING A CHORD BEARING AND DISTANCE OF N 72° 46′ 16″ W – 500.73 FEET TO A POINT;
THENCE, S 56° 04′ 25″ W A DISTANCE OF 199.96 FEET TO A POINT;
THENCE, S 16° 06′ 48″ E A DISTANCE OF 116.66 FEET TO A SET IRON PIPE;
THENCE, S 59° 06′ 15″ E A DISTANCE OF 886.73 FEET TO A SET IRON PIPE;
THENCE, N 78° 39′ 30″ E A DISTANCE OF 342.17 FEET TO A POINT;
THENCE, S 65° 03′ 06″ E A DISTANCE OF 227.04 FEET TO A POINT;
THENCE, N 45° 05′ 25″ E A DISTANCE OF 138.16 FEET TO A POINT;
THENCE, S 72° 10′ 39″ E A DISTANCE OF 320.00 FEET TO A POINT;
THENCE, S 30° 27′ 53″ E A DISTANCE OF 245.76 FEET TO A POINT;
THENCE, S 06° 15′ 48″ E A DISTANCE OF 150.00 FEET TO A POINT;
THENCE, S 83° 50′ 46″ W A DISTANCE OF 170.88 FEET TO A POINT;
THENCE, S 32° 44′ 43″ W A DISTANCE OF 260.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF NEVILLE ROAD AREA, LEASE AREA NR-B;
THENCE, ON AND ALONG THE SAID NEVILLE ROAD AREA, LEASE AREA NR-B, THE FOLLOWING SIX (6) COURSES:
THENCE, N 67° 46′ 03″ W A DISTANCE OF 512.91 FEET TO A POINT;
THENCE, N 76° 14′ 39″ W A DISTANCE OF 94.00 FEET TO A POINT;

THENCE, S 81° 19′ 40″ W A DISTANCE OF 161.13 FEET TO A POINT;
THENCE, N 16° 04′ 43″ W A DISTANCE OF 164.86 FEET TO A POINT;
THENCE, S 68° 57′ 51″ W A DISTANCE OF 90.58 FEET TO A POINT;
THENCE, S 03° 34′ 58″ W A DISTANCE OF 80.00 FEET TO A POINT;

THENCE, DEPARTING SAID NEVEL ROAD AREA, LEASE AREA NR-B
N 49° 47′ 18″ W A DISTANCE OF 1032.71 FEET TO A POINT;
THENCE, N 08° 31′ 36″ W A DISTANCE OF 107.10 FEET TO A POINT;
THENCE, N 82° 59′ 21″ W A DISTANCE OF 684.40 FEET TO A POINT;
THENCE, S 57° 26′ 49″ W A DISTANCE OF 499.52 FEET TO A POINT;
THENCE, S 67° 32′ 10″ W A DISTANCE OF 500.00 FEET TO A POINT;
THENCE, N 47° 29′ 26″ W A DISTANCE OF 237.75 FEET TO A POINT;
THENCE, N 10° 10′ 20″ E A DISTANCE OF 194.82 FEET TO A POINT;
THENCE, S 34° 57′ 37″ E A DISTANCE OF 128.00 FEET TO A POINT;
THENCE, N 53° 45′ 56″ E A DISTANCE OF 67.85 FEET TO A POINT;
THENCE, RIGHT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 75.54 FEET, A RADIUS OF 129.30 FEET, A TANGENT OF 38.88 FEET, A DELTA OF 33° 28′ 22″ AND HAVING A CHORD BEARING AND DISTANCE OF S 79° 00′ 33″ W – 74.47 FEET TO A SET IRON PIPE;
THENCE, S 84° 22′ 47″ E A DISTANCE OF 116.36 FEET TO A POINT;
THENCE, N 41° 04′ 44″ E A DISTANCE OF 416.03 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,393,833 SQUARE FEET OR 31.9980 ACRES OF LAND MORE OR LESS.

PARCEL 9:

DESCRIPTION OF NEVILLE ROAD
LEASE AREA NR-B
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 42° 45′ 19″ E A DISTANCE OF 9,906.56 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE N 03° 34′ 58″ E A DISTANCE OF 465.19 FEET TO A POINT ON THE CORNER OF NEVILLE ROAD LEASE AREA NR-A;
THENCE CONTINUING N 03° 34′ 58″ E ON AND ALONG THE SAID NEVILLE ROAD LEASE AREA NR-A A DISTANCE OF 80.00 FEET TO A SET IRON PIPE, A TOTAL DISTANCE OF 545.19 FEET.

THENCE CONTINUING WITH THE SOUTHWESTERLY SIDE OF SAID NEVILLE ROAD, LEASE AREA NR-A THE FOLLOWING FIVE (5) COURSES:

THENCE, N 68° 57' 51" E A DISTANCE OF 90.58 FEET TO A POINT;
THENCE, S 16° 04' 43" E A DISTANCE OF 164.86 FEET TO A POINT;
THENCE, N 81° 19' 40" E A DISTANCE OF 161.13 FEET TO A POINT;
THENCE, S 76° 14' 39" E A DISTANCE OF 94.00 FEET TO A POINT;
THENCE, S 67° 46' 03" E A DISTANCE OF 512.91 FEET TO A POINT;

THENCE, DEPARTING SAID NEVILLE ROAD, LEASE AREA NR-A S 46° 05' 22" E A DISTANCE OF 109.79 FEET TO A SET IRON PIPE;
THENCE, S 20° 39' 46" W A DISTANCE OF 116.29 FEET TO A POINT;
THENCE, N 69° 13' 09" W A DISTANCE OF 375.76 FEET TO A POINT;
THENCE, S 45° 35' 44" W A DISTANCE OF 215.84 FEET TO A POINT;
THENCE, N 86° 27' 59" W A DISTANCE OF 209.20 FEET TO A POINT;
THENCE, S 14° 49' 56" W A DISTANCE OF 89.24 FEET TO A POINT;
THENCE, N 75° 19' 05" W A DISTANCE OF 196.96 FEET TO THE POINT OF BEGINNING AND CONTAINING 297,196 SQUARE FEET OR 6.8227 ACRES OF LAND MORE OR LESS.

PARCEL 10:

DESCRIPTION OF 1100 BLOCK
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMTARY SCHOOL COMMENCE S 33° 57' 10" E A DISTANCE OF 9,744.97 FFET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 46° 13' 45" E A DISTANCE OF 404.12 FEET TO A SET IRON PIPE;
THENCE, S 44° 10' 26" W A DISTANCE OF 483.88 FEET TO A POINT;
THENCE, N 41° 41' 46" W A DISTANCE OF 114.96 FEET TO A POINT;
THENCE, N 27° 53' 10" E A DISTANCE OF 75.56 FEET TO A POINT;
THENCE, N 38° 06' 19" E A DISTANCE OF 108.18 FEET TO A SET IRON PIPE;
THENCE, N 42° 05' 44" W A DISTANCE OF 275.32 FEET TO A SET IRON PIPE;
THENCE, N 47° 54' 16" E A DISTANCE OF 275.32 FEET TO THE POINT OF BEGINNING AND CONTAINING 143,950 SQUARE FEET OR 3.3046 ACRES OF LAND MORE OR LESS.

PARCEL 11:

DESCRIPTION OF 2000 BLOCK
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 26° 07' 59" E A DISTANCE OF 7,615.69 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 33° 27' 23" E A DISTANCE OF 1,252.27 FEET TO A SET IRON PIPE;
THENCE, S 35° 51' 25" E A DISTANCE OF 721.30 FEET TO A SET IRON PIPE;
THENCE, S 29° 26' 59" W A DISTANCE OF 150.00 FEET TO A POINT;
THENCE, S 61° 47' 06" W A DISTANCE OF 139.64 FEET TO A POINT;
THENCE, N 61° 09' 52" W A DISTANCE OF 303.57 FEET TO A POINT;
THENCE, N 43° 29' 03" W A DISTANCE OF 596.39 FEET TO A POINT;
THENCE, N 30° 10' 10" W A DISTANCE OF 1,180.62 FEET TO A POINT;
THENCE, N 37° 01' 42" E A DISTANCE OF 100.00 FEET TO A SET IRON PIPE;
THENCE, N 63° 29' 04" E A DISTANCE OF 327.83 FEET TO THE POINT OF BEGINNING AND CONTAINING 890,996 SQUARE FEET OR 20.4545 ACRES OF LAND MORE OR LESS.

PARCEL 12:

DESCRIPTION OF ARGONNE HILL
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 00° 24' 44" W A DISTANCE OF 7,327.75 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 07° 54' 14" E A DISTANCE OF 642.64 FEET TO A POINT;
THENCE, N 74° 22' 48" E A DISTANCE OF 350.71 FEET TO A POINT;
THENCE, S 56° 05' 46" E A DISTANCE OF 234.54 FEET TO A POINT;
THENCE, S 32° 16' 02" W A DISTANCE OF 471.88 FEET TO A POINT;

THENCE, S 65° 23' 17" E A DISTANCE OF 277.19 FEET TO A POINT;
THENCE, N 88° 32' 24" E A DISTANCE OF 302.66 FEET TO A POINT;
THENCE, S 31° 54' 06" E A DISTANCE OF 243.97 FEET TO A POINT;
THENCE, S 37° 09' 06" E A DISTANCE OF 94.81 FEET TO A POINT;
THENCE, N 54° 22' 18"E A DISTANCE OF 150.35 FEET TO A POINT;
THENCE, N 26° 18' 14" E A DISTANCE OF 209.76 FEET TO A POINT;
THENCE, N 79° 32' 22" E A DISTANCE OF 199.66 FEET TO A POINT;
THENCE, N 84° 22' 01" E A DISTANCE OF 163.77 FEET TOA POINT;
THENCE, S 06° 32' 52" E A DISTANCE OF 204.45 FEET TO A POINT;
THENCE, S 51° 32' 52" E A DISTANCE OF 141.42 FEET TOA POINT;
THENCE, S 06° 32' 52" E A DISTANCE OF 220.34 FEET TO A SET IRON PIPE;
THENCE, S 86° 38' 37" W A DISTANCE OF 557.95 FEET TO A SET IRON PIPE;
THENCE, S 03° 21' 23" E A DISTANCE OF 466.73 FEET TO A POINT;
THENCE, S 84° 06' 45" W A DISTANCE OF 374.58 FEET TO A POINT;
THENCE, N 16° 11' 21" W A DISTANCE OF 461.65 FEET TO A POINT;
THENCE, N 50° 44' 03" W A DISTANCE OF 1,296.01 FEET TO A POINT;
THENCE, S 66° 30' 41" W A DISTANCE OF 369.97 FEET TO A POINT;
THENCE, N 19° 36' 43" W A DISTANCE OF 1,002.97 FEET TO A SET IRON PIPE;
THENCE, N 82° 05' 46" E A DISTANCE OF 875.38 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,802,927 SQUARE FEET OR 41.3895 ACRES OF LAND MORE OR LESS.

PARCEL 13:

DESCRIPTION OF 600 BLOCK
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 40° 35' 46" E A DISTANCE OF 11,991.90 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 56° 18' 45" E A DISTANCE OF 88.37 FEET TO A SET IRON PIPE;
THENCE, S 66° 25' 39" E A DISTANCE OF 114.45 FEET TO A POINT;
THENCE, S 76° 42' 05" E A DISTANCE OF 62.70 FEET TO A POINT;
THENCE, S 19° 10' 29" W A DISTANCE OF 168.26 FEET TO A POINT;
THENCE, S 31° 19' 01" W A DISTANCE OF 35.26 FEET TO A POINT;
THENCE, S 49° 10' 18" W A DISTANCE OF 95.15 FEET TO A POINT;
THENCE, S 75° 13' 41" W A DISTANCE OF 87.32 FEET TO A SET IRON PIPE;

THENCE, N 58° 13' 43" W A DISTANCE OF 80.83 FEET TO A SET IRON PIPE;
THENCE, N 34° 31' 06" W A DISTANCE OF 86.62 FEET TO A POINT;
THENCE, N 00° 00' 00" E A DISTANCE OF 84.47 FEET TO A POINT;
THENCE, N 07° 12' 39" E A DISTANCE OF 52.14 FEET TO A POINT;
THENCE, N 30° 16' 48" E A DISTANCE OF 76.58 FEET TO A POINT;
THENCE, N 43° 34' 19" E A DISTANCE OF 91.72 FEET TO THE POINT OF BEGINNING AND CONTAINS 87,939 SQUARE FEET OR 2.0188 ACRES OF LAND MORE OR LESS.

PARCEL 14:

DESCRIPTION OF 700 BLOCK
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 45° 26' 06" E A DISTANCE OF 12, 346.23 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, N 30° 17' 50" E A DISTANCE OF 711.15 FEET TO A SET IRON PIPE;
THENCE, N 87° 13' 19" E A DISTANCE OF 32.84 FEET TO A POINT;
THENCE, S 69° 13' 47" E A DISTANCE OF 112.00 FEET TO A POINT;
THENCE, S 22° 18' 54" W A DISTANCE OF 199.66 FEET TO A SET IRON PIPE;
THENCE, S 10° 22' 16" W A DISTANCE OF 235.66 FEET TO A SET IRON PIPE;
THENCE, S 37° 28' 47" W A DISTANCE OF 120.47 FEET TO A POINT;
THENCE, S 49° 14' 44" W A DISTANCE OF 174.53 FEET TO A POINT;
THENCE, N 73° 47' 20" W A DISTANCE OF 179.68 FEET TO THE POINT OF BEGINNING AND CONTAINS 139,610 SQUARE FEET OR 3.205 ACRES OF LAND MORE OR LESS.

PARCEL 15:

DESCRIPTION OF WHITE HOUSE AREA
LEASE ARES WH-A
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 32° 22′ 42″ E A DISTANCE OF 6,797.25 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 26° 33′ 14″ E A DISTANCE OF 131.42 FEET TO A POINT;
THENCE, S 47° 28′ 14″ E A DISTANCE OF 161.96 FEET TO A POINT;
THENCE, S 87° 13′ 50″ E A DISTANCE OF 350.00 FEET TO A POINT;
THENCE, S 44° 56′ 54″ E A DISTANCE OF 70.00 FEET TO A POINT;
THENCE, S 10° 10′ 20″ W A DISTANCE OF 194.82 FEET TO A POINT;
THENCE, S 29° 25′ 00″ W A DISTANCE OF 70.48 FEET TO A POINT;
THENCE, S 43° 33′ 05″ E A DISTANCE OF 347.14 FEET TO A POINT;
THENCE, N 72° 06′ 35″ E A DISTANCE OF 247.86 FEET TO A SET IRON PIPE;
THENCE, S 74° 47′ 09″ E A DISTANCE OF 791.12 FEET TO A SET IRON PIPE;
THENCE, S 14° 46′ 46″ E A DISTANCE OF 277.49 FEET TO A POINT;
THENCE, S 69° 01′ 02″ W A DISTANCE OF 121.50 FEET TO A POINT;
THENCE, S 14° 46′ 29″ E A DISTANCE OF 94.33 FEET TO A POINT ON THE NORTH LINE OF WHITE HOUSE AREA, LEASE AREA WH-B;
THENCE, ON AND ALONG THE NORTH LINE OF SAID WHITE HOUSE AREA, LEASE AREA WH-B, S 77° 31′ 24″ W A DISTANCE OF 217.30 FEET TO A POINT;
THENCE, DEPARTING SAID WHITE HOUSE AREA, LEASE AREA WH-B, N 55° 32′ 11″ W A DISTANCE OF 237.47 FEET TO A POINT;
THENCE, N 29° 29′ 21″ E A DISTANCE OF 65.37 FEET TO A POINT;
THENCE, N 67° 58′ 40″ W A DISTANCE OF 221.43 FEET TO A POINT;
THENCE, N 87° 33′ 47″ W A DISTANCE OF 120.76 FEET TO A POINT;
THENCE, N 07° 31′ 48″ E A DISTANCE OF 158.21 FEET TO A POINT;
THENCE, N 73° 50′ 10″ W A DISTANCE OF 57.82 FEET TO A POINT;
THENCE, LEFT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 54.77 FEET, A RADIUS OF 142.77 FEET, A TANGENT OF 27.73 FEET, A DELTA OF 21° 58′ 51″ AND HAVING A CHORD BEARING AND DISTANCE OF S 89° 05′ 14″ W – 54.44 FEET TO A POINT;
THENCE, S 77° 47′ 49″ W A DISTANCE OF 246.21 FEET TO A POINT;
THENCE, N 69° 39′ 17″ W A DISTANCE OF 46.09 FEET TO A POINT;
THENCE, RIGHT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 236.36

FEET, A RADIUS OF 185.30 FEET, A TANGENT OF 137.33 FEET, A DELTA OF
73° 05′ 09″ AND HAVING A CHORD BEARING AND DISTANCE OF
S 80° 16′ 01″ E – 220.66 FEET TO A POINT;
THENCE, S 31° 36′ 22″ W A DISTANCE OF 137.49 FEET TO A POINT;
THENCE, N 40° 24′ 36″ W A DISTANCE OF 270.00 FEET TO A POINT;
THENCE, N 21° 43′ 51″ W A DISTANCE OF 400.79 FEET TO A POINT;
THENCE, N 64° 21′ 15″ W A DISTANCE OF 350.00 FEET TO A POINT;
THENCE, S 67° 38′ 04″ W A DISTANCE OF 102.16 FEET TO A POINT;
THENCE, S 12° 02′ 14″ E A DISTANCE OF 350.00 FEET TO A POINT;
THENCE, S 73° 30′ 07″ W A DISTANCE OF 194.22 FEET TO A POINT;
THENCE, N 24° 16′ 05″ W A DISTANCE OF 512.27 FEET TO A POINT;
THENCE, LEFT ALONG THE ARC OF A CURVE HAVING A LENGTH OF 53.93 FEET, A RADIUS OF 28.56 FEET, A TANGENT OF 39.46 FEET, A DELTA OF 108° 12′ 54″ AND HAVING A CHORD BEARING AND DISTANCE OF
N 88° 22′ 05″ W – 46.27 FEET TO A POINT;
THENCE, N 77° 42′ 32″ W A DISTANCE OF 210.00 FEET TO A POINT;
THENCE, N 28° 14′ 35″ E A DISTANCE OF 378.08 FEET TO A POINT;
THENCE, N 52° 51′ 23″ E A DISTANCE OF 299.30 FEET TO A SET IRON PIPE;
THENCE, S 63° 26′ 52″ E A DISTANCE OF 556.82 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,275,267 SQUARE FEET OR 29.2761 ACRES OF LAND MORE OR LESS.

PARCEL 16:

DESCRIPTION OF WHITE HOUSE AREA
LEASE AREA WH-B
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 40° 40′ 05″ E A DISTANCE OF 9,020.46 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, S 67° 49′ 46″ E A DISTANCE OF 225.00 FEET TO A POINT;
THENCE, S 83° 20′ 27″ E A DISTANCE OF 165.00 FEET TO A POINT;
THENCE, S 46° 17′ 31″ E A DISTANCE OF 378.72 FEET TO A POINT;
THENCE, S 06° 26′ 25″ E A DISTANCE OF 136.08 FEET TO A POINT;
THENCE, N 83° 39′ 46″ W A DISTANCE OF 175.00 FEET TO A POINT;
THENCE, N 42° 12′ 32″ W A DISTANCE OF 153.31 FEET TO A POINT;
THENCE, S 78° 45′ 37″ W A DISTANCE OF 170.00 FEET TO A POINT;
THENCE, S 01° 40′ 27″ E A DISTANCE OF 50.00 FEET TO A POINT;

THENCE, S 34° 30′ 29″ E A DISTANCE OF 292.67 FEET TO A POINT;
THENCE, S 48° 22′ 50″ W A DISTANCE OF 245.02 FEET TO A SET IRON PIPE;
THENCE, S 71° 23′ 52″ W A DISTANCE OF 666.55 FEET TO A SET IRON PIPE;
THENCE, N 73° 27′ 46″ W A DISTANCE OF 336.48 FEET TO A POINT;
THENCE, N 23° 30′ 49″ W A DISTANCE OF 156.15 FEET TO A POINT;
THENCE, N 41° 55′ 05″ E A DISTANCE OF 220.00 FEET TO A POINT;
THENCE, N 02° 40′ 04″ E A DISTANCE OF 203.10 FEET TO A POINT;
THENCE, N 12° 28′ 36″ W A DISTANCE OF 160.86 FEET TO A POINT ON THE SOUTH LINE OF WHITE HOUSE AREA, LEASE AREA WH-A;
THENCE, ON AND ALONG THE SAID SOUTH LINE OF WHITE HOUSE AREA, LEASE AREA WH-A, N 77° 31′ 24″ E A DISTANCE OF 217.30 FEET TO A POINT;
THENCE, DEPARTING SAID WHITE HOUSE AREA, LEASE AREA WH-A, S 57° 19′ 44″ E A DISTANCE OF 171.20 FEET TO A POINT;
THENCE, S 44° 41′ 34″ E A DISTANCE OF 124.74 FEET TO A POINT;
THENCE, N 45° 11″ 35″ E A DISTANCE OF 140.88 FEET TO A POINT;
THENCE, N 45° 57′ 18″ W A DISTANCE OF 127.97 FEET TO A SET IRON PIPE;
THENCE, N 43° 51′ 42″ E A DISTANCE OF 348.15 FEET TO THE POINT OF BEGINNING AND CONTAINING 854,722 SQUARE FEET OR 19.6217 ACRES OF LAND MORE OR LESS.

PARCEL 17:

DESCRIPTION OF HOSPITAL POINT
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 61° 27′ 35″ E A DISTANCE OF 11,956.10 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, N 31° 01′ 10″ E A DISTANCE OF 218.66 FEET TO A SET IRON PIPE;
THENCE, N 14° 42′ 12″ W A DISTANCE OF 47.21 FEET TO A POINT;
THENCE, N 46° 22′ 11″ E A DISTANCE OF 126.36 FEET TO A POINT;
THENCE, N 85° 26′ 35″ E A DISTANCE OF 50.15 FEET TO A POINT;
THENCE, S 47° 56′ 45″ E A DISTANCE OF 87.69 FEET TO A SET IRON PIPE;
THENCE, S 14° 19′ 59″ W A DISTANCE OF 183.67 FEET TO A SET IRON PIPE;

THENCE, S 27° 47′ 56″ W A DISTANCE OF 100.67 FEET TO A POINT;
THENCE, S 34° 05′ 22″ W A DISTANCE OF 105.76 FEET TO A POINT;
THENCE, N 61° 21′ 39″ W A DISTANCE OF 137.63 FEET TO A POINT;
THENCE, N 50° 25′ 42″ W A DISTANCE OF 39.05 FEET TO THE POINT OF BEGINNING AND CONTAINS 67,482 SQUARE FEET OR 1.5492 ACRES OF LAND MORE OR LESS.

PARCEL 18:

DESCRIPTION OF CHAMBERLAIN VILLAGE
LEASE AREA
SITUATED ON THE QUANTICO MARINE BASE
PRINCE WILLIAM COUNTY, VIRGINIA

COMMENCING FROM THE PRINCE WILLIAM COUNTY MONUMENT PW15, LOCATED ON THE GROUNDS OF THE TRIANGLE ELEMENTARY SCHOOL COMMENCE S 55° 32′ 57″ E A DISTANCE OF 8,739.73 FEET TO A SET IRON PIPE, BEING THE POINT OF BEGINNING.

THENCE, N 37° 19′ 12″ E A DISTANCE OF 381.92 FEET TO A SET IRON PIPE;
THENCE, N 78° 41′ 02″ E A DISTANCE OF 602.91 FEET TO A POINT;
THENCE, S 58° 08′ 29″ E A DISTANCE OF 321.11 FEET TO A POINT;
THENCE, S 40° 36′ 43″ E A DISTANCE OF 271.69 FEET TOA POINT;
THENCE, S 20° 42′ 04″ E A DISTANCE OF 497.39 FEET TOA POINT;
THENCE, S 26° 47′ 49″ E A DISTANCE OF 251.30 FEET TO A POINT;
THENCE, S 15° 16′ 40″ E A DISTANCE OF 147.83 FEET TOA POINT;
THENCE, S 43° 32′ 32″ W A DISTANCE OF 97.32 FEET TO A POINT;
THENCE, N 86° 36′ 01″ W A DISTANCE OF 197.24 FEET TOA SET IRON PIPE;
THENCE, N 59° 57′ 06″ W A DISTANCE OF 545.20 FEET TOA SET IRON PIPE;
THENCE, N 52° 30′ 47″ W A DISTANCE OF 322.77 FEET TO A POINT;
THENCE, N 62° 17′ 31″ W A DISTANCE OF 246.58 FEET TO A POINT;
THENCE, N 78° 45′ 50″ W A DISTANCE OF 297.91 FEET TO A POINT;
THENCE, N 59° 49′ 42″ W A DISTANCE OF 77.12 FEET TO A POINT;
THENCE, N 30° 10′18″ E A DISTANCE OF 115.27 FEET TO A POINT;
THENCE, N 54° 14′ 49″ W A DISTANCE OF 109.90 FEET TO THE POINT OF BEGINNING CONTAINING 1,070,968 SQUARE FEET OR 24.5860 ACRES OF LAND MORE OR LESS.

LESS AND EXCEPT BUCK-KEYES CEMETERY; COMMENCING FROM A SET IRON PIPE ON THE SOUTH SIDE OF THE ABOVE DESCRIBED CHAMBERLAIN VILLAGE LEASE AREA, THENCE N 11° 57′ 04″ E A DISTANCE OF 172.33 FEET TO THE POINT OF BEGINNING;

THENCE ON AND ALONG THE FENCE AROUND SAID BUCK-KEYES CEMETERY THE FOLLOWING EIGHT (8) COURSES: N 66° 41' 57" W A DISTANCE OF 268.49 FEET TO A POINT;
THENCE, N 22° 32' 02" E A DISTANCE OF 76.14 FEET TO A POINT;
THENCE, N 87° 55' 01" E A DISTANCE OF 199.14 FEET TO A POINT;
THENCE, S 31° 58' 25" E A DISTANCE OF 69.18 FEET TO A POINT;
THENCE, S 26° 11' 49" E A DISTANCE OF 80.28 FEET TO A POINT;
THENCE, S 15° 08' 23" E A DISTANCE OF 29.59 FEET TO A POINT;
THENCE, S 05° 28' 20" W A DISTANCE OF 19.95 FEET TO A POINT;
THENCE, S 85° 33' 54" W A DISTANCE OF 59.67 FEET TO THE POINT OF BEGINNING. CONTAINING 35,829 SQUARE FEET OR 0.8225 ACRES OF LAND MORE OR LESS.

LEAVING AN AGGREGATE OF 1,035,139 SQUARE FEET OR 23.7635 ACRES OF LAND MORE OR LESS.

PARCEL 19:

Easements including but not limited to the right of access to and use of the streets, roads, electric, gas telephone, water and sewer facilities now or in the future appurtenant to the above described property as defined and granted in that certain Real Estate Ground Lease, a memorandum of which was recorded September 30, 2003, as Instrument Number 200309300178476 in the Official Records, by and between the United States of America, Department of the Navy, as Lessor and Hunt Lincoln Clark Family Communities, LLC, as Lessee, Dated October 1, 2003, subject to the terms and conditions contained therein.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] ays of requested review for Design Materials and Design Work. The Company acknowledges that the design subcontractor and/or its consultants will not stop work during the review and approval period and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the [redacted] ay review time, then after [redacted] days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work:

   a. Design Development: 100% Design Development documents will be submitted for review and approval. The 100% Design Development package will include Civil and Architectural documents and summary Specifications with sufficient detail to demonstrate design intent and substantial conformance to RFP requirements. The Architectural Documents will include 1/4 scale unit plans, 1/8 scale building plans and elevations, and an architectural site plan. The Civil Documents will include grading and improvement plans with preliminary road and utility profiles.

   b. Construction Documents: Review and approval will occur at 50% and 100% completion of the Construction Documents. The 50% level of completion will coincide with submission of the Construction Documents

to the City of San Diego for permit and first plan check. At this time the Company will review all drawings and specifications. The Company will give final approval of all Drawings and Specifications upon review of the 100% Construction Documents.

5. The Design/Builder shall provide a submittal register detailing the items to be submitted by the Design/Builder to the Company for approval withi days of the execution of this Agreement. The Company shall review and approve this list within lays from receipt of the register. The Design/Builder will then provide submittals for review and approval in accordance with the register. The Company shall approve individual submittals submitted by the Design Builder withi lays of receipt.

6. Notwithstanding the foregoing, if the Design/Builder and/or a Design Subcontractor determine that the Company's approval of a specific component, item, or system is required to continue the Design Work in accordance with the Schedule, and such approval is not described above, the Company shall give its approval in accordance with paragraph 2 above.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

Exh. K-2

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Venture evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of Virginia where the project is located and elsewhere as may be required. Coverage shall Include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

INSURANCE REQUIREMENTS (CONT'D)

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Contractors Pollution Liability Coverage: Coverage to be written on an Occurrence basis and will provide for Sudden and Accidental Pollution coverage.

6. Builder's Risk Coverage: [redacted]

INSURANCE REQUIREMENTS (CONT'D)

5. Insurance Requirements

7. The Design/Builder will endorse the Commercial General Liability and Umbrella Policies to include the Company and Department of Navy as Additional Insured's using Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and Department of Navy.

9. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per Schedule L, and Design/Builder agrees to pay the cost of said insurance to the Company.

10. Company's Liability Insurance

The Company shall be responsible for purchasing and maintaining the Venture's usual liability Insurance, if desired. Optionally, the Company may purchase and maintain other insurance for Self-protection against claims which may arise from operations under the Contract. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

DESIGN GROUP MEMBERS

Exh. M-1

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

Exh. N-1-2

Exh. N-1-3

Exh. N-1-4

Exh. N-1-5

Exh. N-1-6

Exh. N-1-7

Exh. N-1-8

EXHIBIT N-2

FORM OF SUBCONTRACTOR BONDS

Exh. N-2-2

Exh. N-2-3

Exhibit "C"
PERFORMANCE BOND

Exh. N-2-4

Exh. N-2-5

CO-OBLIGEE'S DUAL OBLIGEE RIDER

EXHIBIT O

Exh. O-3

EXHIBIT P

DAVIS BACON COMPLIANCE

Design-Builder Audit Procedure:

1. Design/Builder (which also may be referred to as "Contractor" or "Prime Contractor") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision, and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design-Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design-Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or

her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

7. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX 12

General Decision Number VA020056

General Decision Number VA020056
Superseded General Decision No. VA010056
State: Virginia
Construction Type:
RESIDENTIAL
County(ies):
ALEXANDRIA* FAUQUIER PRINCE WILLIAM ARLINGTON
FREDERICKSBURG* SPOTSYLVANIA
CLARKE KING GEORGE STAFFORD
CULPEPER LOUDOUN WARREN
FAIRFAX MANASSAS PARK*
FALLS CHURCH* MANASSAS*
*INDEPENDENT CITIES
RESIDENTIAL CONSTRUCTION PROJECTS consisting of single family homes and apartments up to and including 4 stories.

Modification Number	Publication Date
0	03/01/2002
1	05/03/2002

COUNTY(ies):
ALEXANDRIA* FAUQUIER PRINCE WILLIAM ARLINGTON
FREDERICKSBURG* SPOTSYLVANIA
CLARKE KING GEORGE STAFFORD
CULPEPER LOUDOUN WARREN
FAIRFAX MANASSAS PARK*
FALLS CHURCH* MANASSAS*
* IRON0201C 05/01/2002

	Rates	Fringes
IRONWORKERS, REINFORCING	22.15	9.05

SUVA4117A 09/30/1999

	Rates	Fringes
BRICKLAYERS	16.89	.50
CARPENTERS (Excluding Drywall Hanging and Batt Insulation Work)	13.21	
CEMENT MASONS	12.00	1.00
DRYWALL HANGERS	14.57	
ELECTRICIANS	13.86	1.54
INSULATORS, BATT	8.81	.40
LABORERS:		
Unskilled	9.25	
Mason Tenders, Brick	9.25	
Concrete Laborers	11.00	
PAINTERS, BRUSH and ROLLER	10.50	.94
PLUMBERS (Including HVAC Pipe Work and Install)	14.44	1.57
POWER EQUIPMENT OPERATORS:		
Backhoes	12.99	1.77
SHEET METAL WORKERS (Including HVAC Duct Work)	13.27	.58

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Exh. P-6

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

Exh. P-7

EXHIBIT G-2

INITIAL PENDLETON DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

EXHIBIT G-2

PENDLETON DESIGN/BUILD AGREEMENT

By and Between

Hunt Lincoln Clark Family Communities LLC

and

[redacted] as Design/Builder

Dated as of October 1, 2003

#1347420 v17 - Pendleton Design Build Agreement

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LIST OF EXHIBITS

PENDLETON DESIGN/BUILD AGREEMENT

This Pendleton Design/Build Agreement (this "Agreement") dated as of October 1, 2003 and effective for all purposes as of October 1, 2003 (the "Effective Date"), is by and between Hunt Lincoln Clark Family Communities LLC, a Delaware limited liability company (the "Company") and [redacted] (the "Design/Builder").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **"Affiliate"** means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.2 **"Agreement"** means this Pendleton Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.3 **"Applicable Laws"** means all laws (including, without limitation, the Davis Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.4 **"Application for Payment"** means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.5 **"Architect"** means [redacted] or [redacted] [redacted] (as the case may be).

1.6 **"Authorized Representatives"** means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.7 "Certificate of Substantial Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Work or applicable portion thereof is Substantially Complete.

1.8 "Certificate of Final Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Project or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.9 "Change Directive" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the [redacted] Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.10 "Change Order" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the [redacted] Schedule, and which shall constitute a Modification. The [redacted] Schedule may be changed only by Change Order.

1.11 "Change Proposal" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.12 "Civil Engineer" means [redacted]

1.13 "Company Event of Default" shall have the meaning set forth in Section 12.3 hereof.

1.14 "Company Indemnified Parties" means the Company, its members, agents, partners and employees.

1.15 "Construction Agreement" means that certain Pendleton Construction Agreement between the Contractor and the Design/Builder dated as of October 1, 2003, as amended and modified from time to time.

[redacted]

1.17 "Construction Consultant" shall have the meaning set forth in the Operating Agreement.

1.18 "Construction Documents" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and

modifications to the Plans and Specifications must be approved by the Company prior to incorporation into this Agreement.

1.19 "Construction Notice to Proceed" means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.20 "Construction Phase" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.21 "Construction Work" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.22 "Contract Documents" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.23 "Contract Time" means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.24 "Contractor" means

1.25 "Contingency" shall have the meaning set forth in Section 5.17.

1.26 "Cost of the Work" consists of those items of Work which are paid for by the Company to the Design/Builder, and consist of those categories of costs set forth as allowable on Exhibit D.

1.27 "CPM" means a critical path method schedule in the form of precedents, networks and time sequences.

1.28 "Credit Provider" shall have the meaning as set forth in the Operating Agreement.

1.29 "Day" or "Days" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "Business Day" or "Business Days" means Days other than weekend, national or local holidays in which federal or state government agencies in the State of California are open for business.

1.30 "Design/Builder" means

1.31 "Design/Builder Event of Default" shall have the meaning set forth in Section 12.1 hereof.

1.32 "Design/Builder Indemnified Parties" means the Design/Builder, Contractor and the Architect and its and their partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.33 "Design Group" means all architects and engineers having a contract with the Design/Builder to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.34 "Design Materials" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.35 "Design Phase" means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.36 "Design Work" means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.37 "Environmental Documents" means the environmental documents listed on Exhibit C.

1.38 "Excusable Delay" shall have the meaning set forth in Section 4.6.1 hereof.

1.39 "Fee" means the fee payable to the Design/Builder, which is a [redacted] n

1.40 "Final Completion" or "Finally Complete" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.41 "Force Majeure" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), extreme weather conditions, material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the Design/Builder.

1.43 **"Governmental Approvals"** means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.44 **"Hazardous Materials"** means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq. ("CERCLA"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. ss 6901 et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "Environmental Laws");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. Section 6991.

1.45 **"Inexcusable Delay"** shall have the meaning set forth in Section 4.6.1.

1.46 **"Landscaping Work"** shall have the meaning set forth in Exhibit A.

1.47 **"Liquidated Damages"** shall have the meaning set forth in Section 4.6.4.

1.48 **"Managing Member"** means [redacted], which is the managing member of the Company.

1.49 **"Modification"** means an amendment to this Agreement executed by the Parties after the Effective Date.

1.50 **"Notice to Begin Design"** means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.51 **"Operating Agreement"** means that certain Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2003.

1.52 **"Order of Magnitude Documents"** means the drawings, specifications and other documents prepared for the Design/Builder by the Architect for the Company's review and approval prior to the preparation of the Construction Documents, as more particularly specified in Exhibit J hereto. The Order of Magnitude Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.53 **"Overhead"** means [redacted]

1.54 **"Party" or "Parties"** means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.55 **"Payment and Performance Bonds"** means the payment bond and performance bonds issued by the Surety, in the form set forth on Exhibit N, covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor, as required under the Construction Agreement.

1.56 **"Phases"** means the construction phases of the Project described in Exhibit "G," as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Construction Agreement are initially included as alternates

under the Construction Agreement and will be incorporated into the Construction Agreement by change order prior to the commencement of each such Phase.

1.57 **"Project"** means the facilities to be known as Pendleton Family Housing, MCB, San Diego County, California, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.58 **"Punch list"** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.59 **"Quantico Design/Build Agreement"** means the Quantico Design/Build Agreement dated as of October 1, 2003, between the Company and and all amendments and/or modifications thereof.

1.60 **"Rehabilitation Work"** shall mean the rehabilitation of existing residential units as more fully described in Exhibit A.

1.61 **"Retainage"** means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.63 **"Schedule"** means the schedule attached hereto as Exhibit H. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.64 **"Scheduled Date of Substantial Completion"** means those dates the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.65 **"Separate Contractors"** means those individuals or entities (other than the Team Subcontractors) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.66 **"Site"** is the real property on which the Project will be located, which is more fully described on Exhibit I hereto, and any other real property on which the Work will be performed.

1.67 **"Subcontract"** means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work.

1.68 **"Subcontractor"** means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for

the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.69 **"Substantial Completion"** or **"Substantially Complete"** means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.70 **"Surety"** means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.71 **"Team Subcontract"** means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement.

1.72 **"Team Subcontractors"** means the Contractor and the Architect.

1.73 **"Trustee"** shall have the meaning set forth in the Operating Agreement.

1.74 **"United States Member"** means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.75 **"Work" or "Scope of Work"** means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work, Rehabilitation Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the date(s) of Substantial Completion set forth in the Schedule attached as Exhibit H, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder hereby assigns outright and exclusively to the Company all copyrights in the design appearance of the Project. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims from such for claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "Claims") (a) arising from any use by the Company, its successors or assigns of such Design Materials if the Design/Build Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the

performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Project characterization reports listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in th[redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all existing above and below grade structures in the Scope of Work including the removal of any Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the RFP or known as of the Effective Date by the Design/Builder or Affiliates Project characterization reports listed on Exhibit C, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place. Any other Hazardous Materials besides the ones specifically identified in this Section are not included in the Scope of Work.

2.5 Order of Magnitude Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Order of Magnitude Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Order of Magnitude Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the

Company's review of the Order of Magnitude Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibits H and J hereto, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the durations and procedures set forth in Exhibits H and J hereto.

2.6 Legal Requirements.

2.6.1 The Design/Builder shall:

2.6.1.1 Comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between local laws, codes, ordinances, rules, regulations and orders and this Agreement or the Contract Documents, the Design/Builder is required to comply with local laws, codes, ordinances, rules, regulations and orders, but the Design/Builder shall be entitled to a Change Order adjusting the Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Company's consulting architect assigned to the Project (the "Consulting Architect") and the Company for review.

To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder

shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company withi Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the RFP and the Offer (as each is defined in the Operating Agreement) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Rehabilitation Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Rehabilitation Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the RFP and the Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or

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

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the RFP and the Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion of such building or group of buildings. If within [redacted] after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of [redacted] shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to [redacted] after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work if incurred prior to Final Completion of the Work [redacted].

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section

2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Omitted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct it in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time, the Company may remove it and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Business Days after written notice, the Company may, upon additional Business Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1.

2.8.9 Acceptance of Work. If the Company prefers to accept Construction Work, Rehabilitation Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may instead of requiring its reperformance, If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be Cost of the Work if incurred prior to Final Completion of the Work.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the

Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Consulting Architect, the United States Member and their respective authorized designees access to the Project Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Site.

The Design/Builder shall prepare a Mobilization Plan, prior to the start of each phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company. The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in the chedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the

Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor ; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is an change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 **"Shop Drawings"** are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 **"Product Data"** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 **"Samples"** are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Consulting Architect, and ROICC (Resident Officer in Charge of Construction) timely notice of when and where tests and inspections are to be made so that the Company, the Consulting Architect, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the

Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid as a Cost of the Work.

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Subcontractors and other persons carrying out the

Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond such liens within [redacted] Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond such liens within such [redacted] Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may bond such liens and charge the cost of the bond and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching site utilities, materials, or other site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule [redacted]

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company a[redacted] An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design/Builder shall pay such costs as a Cost of the Work, unless such condition was caused by the Company or

a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the

Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be Cost of the Work. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work.

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architect's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a

Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure withir Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within suc Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such second Day period. If the Design/Builder within such second Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion Dates for each building. The dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within [redacted] Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for each Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay").

4.6.1.1 Failure or inability of the Company to make available any or all of the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company to or the Design/Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay,

the costs associated with such measures shall be paid by the Company

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the scheduled date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages le

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION ;

5.1 .

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement the

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (to include the United States Member) have agreed upon the schedule of values shown in Exhibit E, which set forth the various portions of the Work, [redacted] This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering t[redacted] Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the fifteenth (15th) Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than fifteen (15) Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder

in writing within five (5) Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Design Work

5.5.2 With respect to Construction Work, Retainage on each Phase shall be withheld until the Phase i complete; thereafter, no further Retainage will be withheld on that Phase. No Retainage shall be withheld on account of Overhead, Fee, general conditions payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents (as defined in the Operating Agreement), Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, l f the value of any uncompleted Work or Punch list items relating to such building. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1 [redacted]; or

5.9.2 [redacted]

5.9.3 [redacted]

5.9.4 [redacted]

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate o from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder withi Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upo Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule shall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 Substantial Completion.

When the Design/Builder considers that a building is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work.

Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building or phase of the Project is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building or phase and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building or phase, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the

Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

ch Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. After Final Completion of the Quantico Project, any unused "Contingency" under the Quantico Design/Build Agreement shall be available for use as Contingency by Design/Builder under this Agreement, subject to the First Mortgage Loan Documents. After Final Completion of the Work, any unused Contingency under this Agreement shall be available for the Quantico Design/Builder as "Contingency", under the Quantico Design/Build Agreement and if not needed by the Quantico Design/Builder, to the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in this Agreement, subject to the First Mortgage Loan Documents. Notwithstanding the foregoing (1) reduction in the line item amounts for Landscape, Amenity and Community Buildings in excess o of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of f the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of [redacted] must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive withi[redacted] Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in [redacted]he Schedule. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in th[redacted] Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. [redacted] When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedul[redacted] such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the

preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in th Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within after it becomes aware of the event giving rise to the Change Proposal. The Company shall have after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on account of Change Orders and/or Excusable Delays.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1 [redacted]

6.5.3 **Decreased Scope.** With respect to Change Orders which decrease the Scope of Work described on Exhibit A, [redacted]

6.6 Changes on Account of Delay in Commencement of Work.

[redacted]

6.7 Changes on Account of Escalation in Costs.

[redacted]

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of each building, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Architect pursuant to which the Design/Builder shall delegate the design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("Self-Performed Work"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value . The Design/Builder will then select the subcontractor that represents the best value for the Project. e

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ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds prior to, and as a condition precedent to, commencement of the Construction Work on the Site. The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees, a

Prior to the commencement of the Work on any Alternate, a Surety that issued the Payment Bond and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment Bond and Performance Bond. The Payment and Performance Bonds shall be in the forms set forth as Exhibit N-1 hereto, and shall be issued by a Surety. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds provided pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees and shall be in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be provided by a Surety. All other payment and performance bonds shall be provided by sureties that appear on the approved list of sureties issued by the United States Department of Treasury. The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

[redacted]

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("OSHA").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Section 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4).

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The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after [redacted] prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such [redacted] period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative r

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within f Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within Business Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the disput During such Business Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Business Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess o then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

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

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other

proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated withi Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an additional Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

The following shall be considered "Company Events of Default":

12.3.1 if the Work is stopped for a period of Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents; or

12.3.3 if the Work is stopped for a period of t Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If an Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released withir [redacted] Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would

have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible [redacted] Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Contract and the Contact Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents and Second Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

If to the Company:

[redacted]

and

[redacted]

and

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and

enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in good faith to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Design/Builder's Consent and Assignment Agreement.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of t years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:.

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until [redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

COMPANY:

HUNT LINCOLN CLARK FAMILY COMMUNITIES LLC, a Delaware limited liability company

[redacted]

[Signature Page to Pendleton Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN/BUILDER:

[Signature Page to Pendleton Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	[redacted]
Exhibit F	-	Company Governmental Approvals
Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Designation of Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	[redacted]
Exhibit P	-	Davis Bacon Compliance

EXHIBIT A

[redacted]

[redacted]

EXHIBIT-A

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

- Environmental Baseline Survey for Del Mar, Forester Hills, Wire Mountain 3, Wire Mountain 1, South Mesa 1, Santa Margarita, Wire Mountain 2, San Luis Rey, Serra Mesa, O'Neill Heights, O'Neill Heights East, South Mesa 2.

  g — July 2002

- General Decision Number CA020001 Davis-Bacon Wage Determination — January 17, 2003

- General Decision Number CA020028 Davis-Bacon Wage Determination — January 24, 2003

- Phase 1 Environmental Site Assessment — August 28, 2003
)

- Asbestos/Hazardous Materials Building Survey to Facilitate Demolitions — August 14, 2003
  g

- Soils Report with boring logs for Wire Mountain 2 — July 25, 2003
)

- Soils Report with boring logs for Wire Mountain 1 — July 31, 2003
)

- SWPPP Storm Water Pollution Prevention Plan — September 3, 2003

- Construction Plans and Specifications MCB Camp Pendleton,

1. Site Drawings dated 9 September 2003 for all new /replacement housing.

2. Replacement and Revitalization Family Housing Units dated 20 June 2003
% Project Submittal includes architecture for renovated units and sites, community centers.

3. Replacement Family Housing Units dated 16 May 2003 Site Only
% Submittal.

4. Replacement Family Housing Units dated 16 May - Site Only
% Submittal.

5. Replacement Family Housing Units dated 16 June 2003

6. Architecture Only % Submittal dated 16 June 2003

7. Replacement Family Housing Units dated 16 June 2003
- Architecture Only [redacted]% Submittal

Exh. C-2

EXHIBIT D

COST OF THE WORK

Exh. D-2

Exh. D-3

Exh. D-4

Exh. D-5

EXHIBIT E

Exh. E-2

EXHIBIT F

COMPANY GOVERNMENT APPROVALS

The following constitute the regulatory approvals for which the Company is responsible.

California Regional Water Quality Control Board:

Submission of site grading and construction information to the California Regional Water Quality Control Board as required, to obtain a storm water permit and/or approval of the Storm Water Pollution and Protection Plan(s) (SWPPP).

Department of the Navy:

Obtain written approval of all plans and specifications from the Navy. Plans and specifications will be submitted in accordance with Exhibit J of this Agreement.

Utilities:

The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone. power, gas, phone, data and CATV.

Group Approvals:

Currently there are no known required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from citizen groups, associations, etc.

Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the sites, such approvals shall be the responsibility of the Company.

EXHIBIT G

PROJECT PHASES

[redacted]

Exh. G-1

Exh. G-2

Exh. G-3

EXHIBIT H

SCHEDULE

[See Attached]

DEMO & REPLACE

EXHIBIT I

SITE DESCRIPTION

EXHIBIT I

All that certain real property situated in the County of San Diego and the County of Mono, State of California, described as follows:

PARCEL A1: **O'NEIL HEIGHTS EAST**

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence N 48°22'21" W a distance of 3502.784 meters to THE TRUE POINT OF BEGINNING also known as point "A" for this description;

Thence through a non-tangent curve turning to the right, with an arc length of 217.615 meters, a radius of 104.423 meters, a chord bearing S 12°10'17" W, and a chord length of 180.319 meters;

Thence through a non-tangent compound curve turning to the right, with an arc length of 36.783 meters, a radius of 29.989 meters, a chord bearing of N 74°05'18" W, and a chord length of 34.520 meters;

Thence N 24°19'28" W a distance of 59.045 meters;

Thence N 09°22'26" W a distance of 49.739 meters;

Thence N 06°25'37" W a distance of 109.640 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 28.714 meters, a radius of 185.928 meters, a chord bearing of S 73°30'14" E, and a chord length of 28.685 meters;

Thence S 67°21'15" E a distance of 95.798 meters to THE TRUE POINT OF BEGINNING, also being Point "A".

PARCEL A2

Commencing at said point "A" as described above; thence N 11°55'30" W 15.034 meters to THE TRUE POINT OF BEGINNING;

Thence N 67°00'58" W a distance of 41.929 meters;

Thence N 59°35'54" E a distance of 53.801 meters;

Thence S 09°27'55" E a distance of 31.157 meters;

Thence through a non-tangent curve to the right, with an arc length of 23.566 meters, a radius of 9.754 meters, a chord bearing of S 45°08'00" W, and a chord length of 18.238 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: Parcels 1 and 2 having a combined area of 2.401 hectares (5.933 ac.).

PARCEL B1: O'NEIL HEIGHTS

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a

distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence N 49°22'36" W a distance of 3668.901 meters to THE TRUE POINT OF BEGINNING also known as point "A" for this description;

Thence through a non-tangent curve turning to the left, with an arc length of 171.340 meters, a radius of 248.346 meters, a chord bearing of S 75°33'16" W, and a chord length of 167.962 meters;

Thence S 52°34'13" W a distance of 28.375 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 167.910 meters, a radius of 182.960 meters, a chord bearing of S 78°51'43" W, and a chord length of 162.080 meters;

Thence N 24°41'26" E a distance of 7.097 meters; Thence N 71°30'38" W a distance of 5.563 meters; Thence N 15°09'02" W a distance of 59.079 meters; Thence N 08°22'36" W a distance of 94.233 meters; Thence N 03°17'12" W a distance of 75.133 meters; Thence N 80°13'05" E a distance of 66.217 meters; Thence N 87°24'20" E a distance of 120.365 meters; Thence N 74°00'52" E a distance of 58.396 meters; Thence N 85°22'03" E a distance of 82.961 meters; Thence N 80°20'00" E a distance of 45.815 meters; Thence N 41°47'37" E a distance of 36.904 meters; Thence N 21°18'52" E a distance of 25.409 meters; Thence N 57°07'48" E a distance of 28.092 meters; Thence N 58°22'28" E a distance of 48.927 meters; Thence S 40°52'22" E a distance of 92.080 meters; Thence S 26°44'38" W a distance of 26.187 meters; Thence S 49°12'11" W a distance of 48.825 meters; Thence S 13°02'01" W a distance of 41.559 meters; Thence S 22°56'59" W a distance of 71.506 meters; Thence S 53°45'48" W a distance of 24.778 meters; Thence S 49°39'40" W a distance of 56.209 meters to THE TRUE POINT OF BEGINNING also being Point "A".

Parcel B2

Commencing at said Point "A"; Thence S 76°31'50" W a distance of 75.087 meters to THE TRUE POINT OF BEGINNING;

Thence S 26°31'37" E a distance of 78.404 meters; Thence S 20°41'01" E a distance of 39.868 meters; Thence S 01°27'29" W a distance of 33.813 meters; Thence S 44°12'08" W a distance of 15.186 meters; Thence S 20°05'37" W a distance of 19.323 meters; Thence S 13°10'42" W a distance

of 53.786 meters; Thence S 04°11'36" E a distance of 75.469 meters; Thence S 03°38'26" W a distance of 51.811 meters; Thence S 01°20'01" E a distance of 46.360 meters; Thence S 02°08'27" E a distance of 47.136 meters; Thence S 16°22'27" E a distance of 45.734 meters; Thence S 02°27'08" E a distance of 18.064 meters; Thence S 53°52'15" W a distance of 11.664 meters; Thence N 89°44'44" W a distance of 58.914 meters; Thence N 78°09'23" W a distance of 23.992 meters; Thence S 86°26'32" W a distance of 45.214 meters; Thence S 85°19'41" W a distance of 54.897 meters; Thence N 83°51'56" W a distance of 15.268 meters; Thence N 36°11'45" W a distance of 31.445 meters; Thence N 01°22'46" E a distance of 86.274 meters; Thence N 00°41'36" W a distance of 51.823 meters; Thence N 12°17'40" E a distance of 24.540 meters; Thence N 02°34'22" E a distance of 29.197 meters; Thence N 08°21'57" W a distance of 65.516 meters; Thence N 74°56'02" W a distance of 70.136 meters; Thence N 55°44'55" W a distance of 11.443 meters; Thence N 10°49'12" W a distance of 60.533 meters; Thence N 03°17'45" W a distance of 34.589 meters; Thence N 09°03'34" E a distance of 26.917 meters;

Thence through a non-tangent curve turning to the left,, with an arc length of 180.740 meters, a radius of 198.547 meters, a chord bearing of N 79°04'00" E, and a chord length of 174.564 meters;

Thence N 52°33'45" E a distance of 27.640 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 90.947 meters, a radius of 169.204 meters, a chord bearing of N 66°32'01" E, and a chord length of 89.857 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: Parcels 1 and 2 having a combined area of 21.532 hectares (53.206 ac.).

PARCEL C: FORESTER HILLS aka FORSTER HILLS

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence S 37°34'24" W a distance of 14652.714 meters to THE TRUE POINT OF BEGINNING;

Thence through a non-tangent curve turning to the right, with an arc length of 36.410 meters, a radius of 156.444 meters, a chord bearing S 16°07'31" E, and a chord length of 36.328 meters;

Thence S 08°44'11" E a distance of 63.123 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 378.897 meters, a radius of 603.514 meters, a chord bearing S 26°45'40" E, and a chord length of 372.705 meters;

Thence S 44°45'06" E a distance of 54.907 meters; Thence S 38°22'27" W a distance of 61.075 meters; Thence N 46°03'57" W a distance of 38.748 meters; Thence S 39°47'35" W a distance of 23.499 meters; Thence S 63°26'31" W a distance of 15.547 meters; Thence S 85°46'30" W a distance of 17.922 meters; Thence N 87°54'49" W a distance of 18.703 meters; Thence S 09°46'58" W a distance of 28.651 meters; Thence S 56°04'08" W a distance of 26.951 meters; Thence N 33°24'11" W a distance of 117.112 meters; Thence N 33°58'20" W a distance of 110.175 meters; Thence N 31°09'23" W a distance of 77.632 meters; Thence N 57°09'31" W a distance of 76.575 meters; Thence N 00°06'53" E a distance of 40.843 meters; Thence N 02°28'12" E a distance of 80.268 meters; Thence N 11°54'41" E a distance of 52.185 meters; Thence N 44°24'52" E a distance of 79.119 meters; Thence N 66°12'19" E a distance of 88.294 meters; Thence N 67°05'39" E a distance of 4.701 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 10.452 meters, a radius of 5.936 meters, a chord bearing S 62°51'57" E, and a chord length of 9.153 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 9.504 hectares (23.484 ac.).

PARCEL D1: **DEL MAR**

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

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Thence S 10°18'37" E a distance of 15.143 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 5.256 meters, a radius of 5.311 meters, a chord bearing S 37°38'16" E, and a chord length of 5.044 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 2.505 meters, a radius of 3.729 meters, a chord bearing S 30°22'17" E, and a chord length of 2.458 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 4.466 meters, a radius of 15.935 meters, a chord bearing S 03°59'07" E, and a chord length of 4.451 meters;

Thence S 10°52'02" E a distance of 145.915 meters; Thence S 10°55'32" E a distance of 26.512 meters; Thence S 11°02'30" E a distance of 96.518 meters; Thence S 11°52'29" E a distance of 107.131 meters; Thence S 11°50'12" E a distance of 30.861 meters; Thence S 11°08'38" E a distance of 48.836 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 55.628 meters, a radius of 81.085 meters, a chord bearing S 13°40'49" W, and a chord length of 54.543 meters;

Thence S 35°03'05" W a distance of 34.917 meters;
Thence through a non-tangent curve turning to the right, with an arc length of 49.905 meters, a radius of 74.515 meters, a chord bearing S 12°31'24" W, and a chord length of 48.978 meters;

Thence S 07°03'04" E a distance of 170.574 meters; Thence S 86°26'34" W a distance of 193.641 meters; Thence N 41°15'57" W a distance of 215.622 meters; Thence N 07°13'26" W a distance of 120.693 meters; Thence N 58°12'34" E a distance of 69.491 meters; Thence N 05°31'19" W a distance of 84.530 meters; Thence N 72°20'54" W a distance of 67.272 meters; Thence N 16°28'37" E a distance of 31.228 meters; Thence N 17°53'46" E a distance of 196.042 meters; Thence N 32°44'12" W a distance of 18.286 meters; Thence N 00°10'20" E a distance of 84.636 meters; Thence N 79°16'54" E a distance of 234.923 meters to THE TRUE POINT OF BEGINNING, also being Point "A".

PARCEL D2

Commencing at said point "A" as described above; thence N 78°46'31" E 12.759 meters to THE TRUE POINT OF BEGINNING;

Thence N 80°12'00" E a distance of 5.548 meters; Thence S 11°45'21" E a distance of 535.841 meters; Thence N 88°16'21" W a distance of 31.413 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 44.465 meters, a radius of 80.040 meters, a chord bearing N 16°47'31" E, and a chord length of 43.895 meters;

Thence N 11°17'07" W a distance of 490.164 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: Parcels 1 and 2 having a combined area of 22.720 hectares (56.142 ac.).

PARCEL E: **SAN LUIS REY**

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

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PARCEL E1

COMMENCING at said Point "A", Thence S 61°23'42" W a distance of 541.683 meters to THE TRUE POINT OF BEGINNING;

Thence N 84°07'59" W a distance of 8.907 meters; Thence N 63°16'49" W a distance of 77.566 meters; Thence S 73°14'15" W a distance of 80.591 meters; Thence N 76°53'37" W a distance of 57.556 meters; Thence N 09°35'00" W a distance of 30.610 meters; Thence N 02°49'40" E a distance of 45.361 meters; Thence N 68°14'38" E a distance of 33.641 meters; Thence N 87°37'00" E a distance of 148.674 meters; Thence S 54°47'28" E a distance of 43.709 meters; Thence S 50°05'13" E a distance of 44.451 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 75.465 meters, a radius of 176.957 meters, a chord bearing of S 28°11'08" W, and a chord length of 74.894 meters to THE TRUE POINT OF BEGINNING.

PARCEL E2

COMMENCING at said Point "A" Thence S 54°12'26" W a distance of 711.653 meters to THE TRUE POINT OF BEGINNING;

Thence S 57°28'42" E a distance of 14.078 meters; Thence S 86°17'04" E a distance of 21.204 meters; Thence S 52°25'28" E a distance of 9.680 meters; Thence S 14°27'50" E a distance of 23.809 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 10.328 meters, a radius of 6.740 meters, a chord bearing of S 07°12'24" W, and a chord length of 9.347 meters,

Thence S 52°27'26" W a distance of 16.580 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 52.271 meters, a radius of 31.144 meters, a chord bearing of N 85°01'26" W, and a chord length of 46.349 meters,

Thence N 40°29'38" W a distance of 20.928 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 21.000 meters, a radius of 14.358 meters, a chord bearing of N 11°00'15" W, and a chord length of 19.178 meters,

Thence N 53°02'13" E a distance of 26.848 meters; Thence N 76°10'45" E a distance of 9.929 meters to THE TRUE POINT OF BEGINNING.

PARCEL E3

COMMENCING at said Point "A" Thence S 53°32'42" W a distance of 615.659 meters to THE TRUE POINT OF BEGINNING;

Thence S 00°25'46" E a distance of 48.529 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 24.823 meters, a radius of 26.709 meters, a chord bearing of S 16°58'36" W, and a chord length of 23.939 meters,

Thence S 51°20'29" W a distance of 17.488 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 15.741 meters, a radius of 8.760 meters, a chord bearing of N 51°22'26" W, and a chord length of 13.707 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 16.346 meters, a radius of 9.538 meters, a chord bearing of N 35°41'58" E, and a chord length of 14.417 meters,

Thence S 84°59'27" E a distance of 10.124 meters; Thence N 06°07'24" E a distance of 55.630 meters; Thence N 40°35'29" E a distance of 10.080 meters to THE TRUE POINT OF BEGINNING.

PARCEL E4

COMMENCING at said Point "A" Thence S 33°35'36" W a distance of 456.562 meters to THE TRUE POINT OF BEGINNING;

Thence through a non-tangent curve turning to the left, with an arc length of 30.224 meters, a radius of 131.450 meters, a chord bearing of N 42°10'29" E, and a chord length of 30.158 meters,

Thence N 35°55'11" E a distance of 7.694 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 22.865 meters, a radius of 11.212 meters, a chord bearing of N 89°09'45" E, and a chord length of 19.104 meters,

Thence S 28°27'39" W a distance of 34.185 meters; Thence S 03°37'54" W a distance of 82.017 meters; Thence S 25°08'47" W a distance of 92.693 meters; Thence S 64°38'08" W a distance of 89.888 meters; Thence N 21°49'20" W a distance of 45.063 meters; Thence N 80°23'59" W a distance of 24.984 meters; Thence N 44°45'19" W a distance of 22.210 meters; Thence N 49°00'31" W a distance of 11.768 meters; Thence N 40°51'56" W a distance of 25.312 meters; Thence N 36°47'02" W a distance of 28.481 meters; Thence N 35°41'25" W a distance of 20.575 meters; Thence N 30°31'33" W a distance of 10.494 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 21.347 meters, a radius of 10.517 meters, a chord bearing of N 29°21'42" E, and a chord length of 17.866 meters,

Thence N 81°19'31" E a distance of 51.957 meters; Thence N 79°45'31" E a distance of 11.481 meters; Thence N 81°19'08" E a distance of 31.408

meters; Thence N 80°39'01" E a distance of 21.491 meters; Thence N 81°29'49" E a distance of 5.409 meters; Thence N 79°27'29" E a distance of 24.352 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 22.937 meters, a radius of 134.255 meters, a chord bearing of N 75°18'58" E, and a chord length of 22.909 meters,

Thence N 64°34'44" E a distance of 16.790 meters; Thence N 58°17'56" E a distance of 23.656 meters; Thence N 50°15'42" E a distance of 6.075 meters to THE TRUE POINT OF BEGINNING.

PARCEL E5

COMMENCING at said Point "A" Thence S 45°32'30" W a distance of 392.558 meters to THE TRUE POINT OF BEGINNING;

Thence through a non-tangent curve turning to the right, with an arc length of 16.255 meters, a radius of 8.547 meters, a chord bearing of N 47°36'08" E, and a chord length of 13.913 meters,

Thence S 89°12'55" E a distance of 3.762 meters; Thence S 00°03'03" E a distance of 30.922 meters; Thence S 37°28'23" E a distance of 7.857 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 7.378 meters, a radius of 7.993 meters, a chord bearing of S 54°51'36" W, and a chord length of 7.119 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 3.899 meters, a radius of 6.347 meters, a chord bearing of S 78°23'28" W, and a chord length of 3.838 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 16.762 meters, a radius of 8.075 meters, a chord bearing of N 41°51'57" W, and a chord length of 13.911 meters,

Thence N 00°03'20" E a distance of 22.337 meters to THE TRUE POINT OF BEGINNING.

PARCEL E6

COMMENCING at said Point "A" Thence S 30°03'01" W a distance of 399.720 meters to THE TRUE POINT OF BEGINNING;

Thence through a non-tangent curve turning to the right, with an arc length of 32.143 meters, a radius of 18.934 meters, a chord bearing of N 20°21'54" W, and a chord length of 28.420 meters,

Thence N 28°03'12" E a distance of 63.101 meters; Thence S 62°46'30" E a distance of 13.576 meters; Thence S 22°42'36" W a distance of 82.517 meters to THE TRUE POINT OF BEGINNING.

PARCEL E7

COMMENCING at said Point "A" Thence S 36°06'11" W a distance of 252.694 meters to THE TRUE POINT OF BEGINNING;

Thence through a non-tangent curve turning to the right, with an arc length of 23.966 meters, a radius of 14.886 meters, a chord bearing of N 80°47'53" E, and a chord length of 21.460 meters,

Thence S 62°02'53" E a distance of 5.964 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 9.208 meters, a radius of 11.975 meters, a chord bearing of S 27°26'51" E, and a chord length of 8.983 meters,

Thence S 54°23'40" W a distance of 31.622 meters; Thence S 13°18'03" W a distance of 8.653 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 6.966 meters, a radius of 7.037 meters, a chord bearing of S 72°52'16" W, and a chord length of 6.685 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 9.943 meters, a radius of 11.301 meters, a chord bearing of N 65°56'49" W, and a chord length of 9.625 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 8.447 meters, a radius of 4.949 meters, a chord bearing of N 07°23'57" W, and a chord length of 7.458 meters,

Thence N 28°05'42" E a distance of 28.130 meters to THE TRUE POINT OF BEGINNING;

PARCEL E8

COMMENCING at said Point "A" Thence S 68°37'03" W a distance of 426.684 meters to THE TRUE POINT OF BEGINNING;

Thence N 41°18'14" E a distance of 153.335 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 16.760 meters, a radius of 10.819 meters, a chord bearing of S 83°06'38" E, and a chord length of 15.134 meters,

Thence S 37°28'03" E a distance of 21.190 meters; Thence S 40°04'30" E a distance of 22.458 meters; Thence S 41°57'41" E a distance of 29.043 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 52.541 meters, a radius of 265.467 meters, a chord bearing of S 49°31'16" E, and a chord length of 52.455 meters,

Thence S 56°17'12" E a distance of 21.885 meters; Thence S 59°59'54" E a distance of 31.158 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 14.077 meters, a radius of 10.109 meters, a chord bearing of S 28°55'43" E, and a chord length of 12.967 meters,

Thence S 25°03'02" W a distance of 3.254 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 3.330 meters, a radius
of 1.848 meters, a chord bearing of S 77°11'57" W, and a chord length of 2.897 meters,

Thence N 62°17'32" W a distance of 4.677 meters; Thence S 27°39'31" W a distance of 37.210 meters; Thence S 61°13'53" E a distance of 3.161 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 6.542 meters, a radius of 3.436 meters, a chord bearing of S 17°40'40" E, and a chord length of 5.598 meters,

Thence S 27°46'52" W a distance of 143.952 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 15.512 meters, a radius of 13.454 meters, a chord bearing of S 85°56'07" W, and a chord length of 14.667 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 21.347 meters, a radius of 20.995 meters, a chord bearing of N 22°11'01" W, and a chord length of 20.439 meters,

Thence N 00°07'44" W a distance of 58.400 meters; Thence N 88°16'04" W a distance of 26.135 meters; Thence N 47°43'05" W a distance of 158.842 meters to THE TRUE POINT OF BEGINNING;

PARCEL E9

COMMENCING at said Point "A", said point being THE TRUE POINT OF BEGINNING;

Thence N 38°14'31" E a distance of 15.949 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 68.952 meters, a radius of 89.091 meters, a chord bearing of N 19°34'01" E, and a chord length of 67.244 meters;

Thence N 08°40'42" W a distance of 8.193 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 25.414 meters, a radius of 18.405 meters, a chord bearing of N 36°24'17" E, and a chord length of 23.443 meters;

Thence N 66°16'38" E a distance of 26.704 meters; Thence N 20°44'18" W a distance of 9.591 meters; Thence S 66°53'17" W a distance of 34.995 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 17.994 meters, a radius of 12.833 meters, a chord bearing of N 73°39'09" W, and a chord length of 16.555 meters;

Thence N 39°56'32" W a distance of 6.811 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 34.998 meters, a radius of 89.058 meters, a chord bearing of N 53°43'12" W, and a chord length of 34.773 meters;

Thence N 71°29'27" W a distance of 11.250 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 16.705 meters, a radius of 7.166 meters, a chord bearing of N 12°57'24" W, and a chord length of 13.171 meters;

Thence N 59°05'29" E a distance of 94.348 meters; Thence N 60°06'28" E a distance of 35.900 meters; Thence N 52°10'32" W a distance of 15.235 meters; Thence N 15°11'12" W a distance of 55.008 meters; Thence N 02°00'19" E a distance of 106.769 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 123.051 meters, a radius of 35.863 meters, a chord bearing of S 84°10'19" E, and a chord length of 96.591 meters;

Thence S 02°03'48" W a distance of 83.541 meters; Thence S 73°04'19" E a distance of 25.155 meters; Thence S 15°41'32" W a distance of 91.826 meters; Thence N 88°44'13" E a distance of 62.083 meters; Thence S 00°52'14" W a distance of 49.455 meters; Thence S 46°02'24" E a distance of 22.040 meters; Thence S 31°01'09" W a distance of 13.672 meters; Thence S 89°01'28" W a distance of 23.736 meters; Thence S 03°44'12" E a distance of 14.728 meters; Thence N 88°30'48" W a distance of 25.773 meters; Thence S 04°00'06" W a distance of 34.682 meters; Thence S 70°44'22" W a distance of 87.776 meters; Thence S 61°23'56" W a distance of 102.526 meters to THE TRUE POINT OF BEGINNING.

PARCEL E10

COMMENCING at said Point "A" Thence S 47°55'18" W a distance of 663.207 meters to THE TRUE POINT OF BEGINNING;

Thence S 17°07'19" E a distance of 39.756 meters; Thence S 03°44'26" W a distance of 70.433 meters; Thence S 32°20'55" W a distance of 17.505 meters; Thence N 60°00'41" W a distance of 28.730 meters; Thence N 39°50'31" W a distance of 52.737 meters; Thence N 30°07'29" E a distance of 43.258 meters; Thence N 50°01'18" E a distance of 45.171 meters; Thence N 68°54'02" E a distance of 4.935 meters to THE TRUE POINT OF BEGINNING.

PARCEL E11

COMMENCING at said Point "A" Thence S 86°03'24" W a distance of 277.511 meters to THE TRUE POINT OF BEGINNING;

Thence N 41°45'38" E a distance of 67.080 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 53.461 meters, a radius
of 242.197 meters, a chord bearing of N 47°59'56" E, and a chord length of 53.352 meters,

Thence N 54°16'05" E a distance of 13.674 meters; Thence N 58°03'56" E a distance of 17.384 meters; Thence N 59°23'22" E a distance of 14.140 meters; Thence N 62°50'09" E a distance of 8.317 meters; Thence N 64°01'56" E a distance of 27.280 meters; Thence N 65°46'07" E a distance of 24.460 meters; Thence N 65°49'24" E a distance of 23.161 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 36.546 meters, a radius of 77.780 meters, a chord bearing of N 74°09'19" E, and a chord length of 36.211 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 41.001 meters, a radius of 62.799 meters, a chord bearing of S 72°11'40" E, and a chord length of 40.276 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 34.930 meters, a radius of 62.819 meters, a chord bearing of S 41°09'39" E, and a chord length of 34.481 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 41.135 meters, a radius of 68.144 meters, a chord bearing of S 08°11'38" E, and a chord length of 40.513 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 33.797 meters, a radius of 58.696 meters, a chord bearing of S 24°46'03" W, and a chord length of 33.332 meters,

Thence S 37°17'28" W a distance of 37.993 meters; Thence S 38°01'01" W a distance of 37.599 meters; Thence S 37°42'35" W a distance of 49.381 meters; Thence S 55°31'19" W a distance of 9.214 meters; Thence S 37°50'36" W a distance of 18.310 meters; Thence S 21°53'30" W a distance of 7.405 meters; Thence S 26°58'39" W a distance of 5.037 meters; Thence S 37°52'29"W a distance of 53.769 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 28.713 meters, a radius of 16.910 meters, a chord bearing of S 78°00'29" W, and a chord length of 25.386 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 51.497 meters, a radius of 326.833 meters, a chord bearing of N 58°32'45" W, and a chord length of 51.444 meters,

Thence through a non-tangent compound curve turning to the right, with an arc length of 56.680 meters, a radius of 209.582 meters, a chord bearing of N 48°10'53" W, and a chord length of 56.507 meters,

Thence N 40°05'56" W a distance of 34.850 meters; Thence N 37°37'24" W a distance of 32.737 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 14.956 meters, a radius of 11.795 meters, a chord bearing of N 04°39'06" E, and a chord length of 13.974 meters to THE TRUE POINT OF BEGINNING.

PARCEL E12

COMMENCING at said Point "A" Thence S 40°56'01" W a distance of 441.250 meters to THE TRUE POINT OF BEGINNING;

Thence S 08°26'51" E a distance of 55.577 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 51.098 meters, a radius of 98.174 meters, a chord bearing of S 72°46'21" W, and a chord length of 50.523 meters,

Thence S 80°37'05" W a distance of 32.970 meters; Thence N 08°33'01" W a distance of 64.307 meters;
Thence N 81°52'59" E a distance of 83.012 meters to THE TRUE POINT OF BEGINNING.

PARCEL E13

COMMENCING at said Point "A" Thence S 37°51'38" W a distance of 88.782 meters to THE TRUE POINT OF BEGINNING;

Thence S 47°33'35" E a distance of 59.201 meters; Thence S 34°27'27" W a distance of 70.788 meters; Thence N 70°38'29" W a distance of 65.479 meters; Thence N 37°11'37"E a distance of 96.175 meters to THE TRUE POINT OF BEGINNING.

PARCEL F: SANTA MARGARITA

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence S 37°51'51" W a distance of 12712.627 meters to THE TRUE POINT OF BEGINNING;

Thence S 04°22'36" E a distance of 97.887 meters; Thence S 05°25'14" E a distance of 82.783 meters; Thence S 26°41'39" W a distance of 45.350 meters; Thence S 67°42'26" W a distance of 71.089 meters; Thence S 51°13'18" W a distance of 12.394 meters; Thence S 32°10'29" W a distance of 71.660 meters; Thence S 45°39'58" W a distance of 12.549 meters; Thence S 86°12'15" W a distance of 92.211 meters; Thence S 44°16'22" W a distance of 27.776 meters; Thence S 52°07'39" W a distance of 24.522 meters; Thence N 86°47'49" W a distance of 29.877 meters; Thence N 52°26'52" W a distance of 37.014 meters; Thence N 27°04'28" W a distance of 52.817 meters; Thence N 35°42'06" W a distance of 56.739 meters; Thence N 02°46'55" W a distance of 21.716 meters; Thence N 25°25'20" W a distance of 32.138 meters; Thence S 77°36'02" W a distance of 2.547 meters; Thence N 29°15'32" W a distance of 182.035 meters; Thence N 15°52'08" W a distance of 89.742 meters; Thence N 20°50'21" E a distance

of 75.711 meters; Thence N 72°46'45" E a distance of 86.135 meters; Thence S 58°03'15" E a distance of 39.892 meters; Thence S 40°06'42" E a distance of 23.082 meters; Thence S 36°11'19" E a distance of 74.678 meters; Thence N 78°44'02" E a distance of 30.478 meters; Thence S 57°36'15" E a distance of 36.784 meters; Thence N 42°12'08" E a distance of 51.954 meters; Thence N 21°23'14" W a distance of 33.168 meters; Thence N 09°56'40" W a distance of 25.116 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 36.892 meters,
a radius of 29.336 meters, a chord bearing of N 00°24'48" W, and a chord length of 34.509 meters;

Thence N 36°17'28" E a distance of 12.661 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 30.893 meters, a radius of 37.210 meters, a chord bearing of N 49°13'07" E, and a chord length of 30.014 meters;

Thence N 68°29'39" E a distance of 14.714 meters; Thence S 69°23'31" E a distance of 24.902 meters;

Thence through a non-tangent curve turning to the left,, with an arc length of 9.421 meters, a radius of 6.013 meters, a chord bearing of N 65°43'34" E, and a chord length of 8.486 meters;

Thence N 12°39'55" E a distance of 31.148 meters; Thence S 70°16'31" E a distance of 42.563 meters; Thence S 26°12'28" E a distance of 35.846 meters; Thence N 68°02'49" E a distance of 21.672 meters; Thence S 28°12'11" E a distance of 112.749 meters; Thence S 09°17'04" E a distance of 82.609 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 19.312 hectares (47.723 ac.).

PARCEL G: SERRA MESA

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All

of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

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Thence N 81°56'19" E a distance of 38.440 meters; Thence N 88°51'49" E a distance of 119.797 meters; Thence N 84°47'57" E a distance of 121.113 meters; Thence N 66°50'26" E a distance of 50.575 meters; Thence S 80°42'39" E a distance of 46.656 meters; Thence S 08°23'39" E a distance of 133.362 meters; Thence S 05°52'32" E a distance of 162.230 meters; Thence S 48°31'07" W a distance of 41.949 meters; Thence N 86°47'25" W a distance of 59.967 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 60.488 meters, a radius of 267.901 meters, a chord bearing S 25°12'36" W, and a chord length of 60.359 meters;

Thence S 40°30'44" E a distance of 23.424 meters; Thence S 03°48'23" E a distance of 112.391 meters; Thence S 72°39'27" W a distance of 75.008 meters; Thence N 50°03'44" W a distance of 42.571 meters; Thence N 05°24'26" W a distance of 93.075 meters; Thence S 88°23'37" W a distance of 19.929 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 36.192 meters, a radius of 96.037 meters, a chord bearing N 79°53'35" W, and a chord length of 35.978 meters;

Thence S 70°05'12" W a distance of 8.009 meters; Thence S 24°26'58" W a distance of 23.330 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 22.479 meters, a radius of 53.874 meters, a chord bearing S 12°14'05" W, and a chord length of 22.317 meters;

Thence S 03°57'00" E a distance of 15.801 meters; Thence N 87°53'43" E a distance of 27.022 meters; Thence S 00°50'15" W a distance of 29.929 meters; Thence S 13°26'23" W a distance of 49.194 meters; Thence N 86°02'32" W a distance of 92.439 meters; Thence N 22°55'56" W a distance of 82.979 meters; Thence N 19°33'06" W a distance of 103.594 meters; Thence N 03°30'45" E a distance of 70.812 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 44.340 meters, a radius of 99.599 meters, a chord bearing S 86°10'59" W, and a chord length of 43.974 meters;

Thence S 73°10'00" W a distance of 46.824 meters; Thence S 83°28'34" W a distance of 68.049 meters; Thence N 03°59'43" E a distance of 20.547 meters; Thence N 33°28'08" E a distance of 310.183 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 19.609 hectares (48.456 ac.).

PARCEL H1: SOUTH MESA 1

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

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Thence S 40°29'38" E a distance of 82.384 meters; Thence S 23°06'05" E a distance of 156.410 meters; Thence S 17°10'22" E a distance of 85.172 meters; Thence S 24°16'35" E a distance of 215.972 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 134.215 meters, a radius of 348.174 meters, a chord bearing of S 54°21'26" W, and a chord length of 133.386 meters;

Thence S 66°27'02" W a distance of 33.398 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 2.522 meters, a radius of 9.014 meters, a chord bearing of S 76°52'25" W, and a chord length of 2.514 meters;

Thence S 82°36'50" W a distance of 11.402 meters; Thence S 69°04'38" W a distance of 17.120 meters;

Thence Through a non-tangent curve turning to the left with an arc length Of 5.088 meters, a radius of 13.008 meters, a chord bearing of S 57°37'35" W, and a chord length of 5.056 meters;

Thence S 50°23'54" W a distance of 10.731 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 2.557 meters, a radius of 8.181 meters, a chord bearing of S 57°27'19" W, and a chord length of 2.546 meters;

Thence S 66°54'15" W a distance of 13.398 meters; Thence S 75°07'43" W a distance of 6.087 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 6.157 meters, a radius of 14.490 meters, a chord bearing of N 85°15'01" W, and a chord length of 6.111 meters; said point being point "A" for this description;

Thence Through a non-tangent compound curve turning to the right with an arc length Of 3.152 meters, a radius of 4.621 meters, a chord bearing of N 51°06'10" W, and a chord length of 3.092 meters;

Thence N 23°01'26" W a distance of 133.244 meters; Thence N 23°12'14" W a distance of 23.566 meters; Thence N 23°08'19" W a distance of 215.788 meters; Thence N 27°40'40" W a distance of 13.808 meters; Thence N 33°07'27" W a distance of 14.809 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 11.500 meters, a radius of 8.573 meters, a chord bearing of N 00°50'03" W, and a chord length of 10.657 meters;

Thence N 53°39'29" E a distance of 21.939 meters; Thence N 33°36'08" W a distance of 11.016 meters; Thence N 38°48'42" W a distance of 104.308 meters; Thence N 07°17'27" E a distance of 73.835 meters; Thence N 76°49'52" E a distance of 103.888 meters; Thence N 76°15'07" E a distance of 87.992 meters to THE TRUE POINT OF BEGINNING.

PARCEL H2

Commencing at said point "A" as described above; Thence S 85°24'49" W 15.404 meters to THE TRUE POINT OF BEGINNING.

Thence Through a non-tangent curve turning to the right with an arc length Of 13.531 meters, a radius of 8.491 meters, a chord bearing of S 23°22'09" W, and a chord length of 12.144 meters;

Thence S 66°52'50" W a distance of 169.702 meters; Thence S 72°50'02" W a distance of 4.331 meters; Thence S 83°10'46" W a distance of 9.986 meters; Thence S 75°06'22" W a distance of 4.933 meters; Thence S 67°27'46" W a distance of 12.138 meters; Thence S 56°11'46" W a distance of 3.190 meters; Thence S 48°55'29" W a distance of 5.161 meters; Thence S 58°14'05" W a distance of 3.423 meters; Thence S 66°51'12" W a distance of 164.254 meters; Thence N 26°00'08" W a distance of 72.437 meters; Thence N 46°15'19" W a distance of 29.159 meters; Thence N 24°10'21" W a distance of 134.950 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 16.457 meters, a radius of 14.764 meters, a chord bearing of N 02°41'17" W, and a chord length of 15.618 meters;

Thence N 22°26'23" E a distance of 75.820 meters; Thence N 49°56'02" W a distance of 65.944 meters;

Thence Through a non-tangent curve turning to the right with an arc length of 57.315 meters, a radius of 212.093 meters, a chord bearing of N 38°02'39" W, and a chord length of 57.141 meters;

Thence N 24°47'31" W a distance of 211.452 meters;

Thence Through a non-tangent curve turning to the right with an arc length Of 55.911 meters, a radius of 43.987 meters, a chord bearing of N 28°19'41" E, and a chord length of 52.223 meters;

Thence N 09°00'27" W a distance of 111.359 meters; Thence N 05°20'53" E a distance of 92.130 meters; Thence N 12°32'43" W a distance of 65.334 meters; Thence N 63°31'49" E a distance of 34.446 meters; Thence S 77°43'34" E a distance of 68.474 meters; Thence S 39°45'08" E a distance of 79.740 meters; Thence S 43°32'12" E a distance of 228.971 meters; Thence S 37°01'19" E a distance of 25.328 meters; Thence S 37°24'47" E a distance of 20.939 meters;

Thence Through a non-tangent curve turning to the left with an arc length Of 90.323 meters, a radius of 270.950 meters, a chord bearing of S 48°37'23" E, and a chord length of 89.906 meters;

Thence S 51°34'41" E a distance of 34.430 meters; Thence S 40°59'59" E a distance of 23.833 meters; Thence S 31°50'07" E a distance of 25.181 meters; Thence S 22°59'16" E a distance of 372.133 meters; Thence S 35°10'21" E a distance of 1.340 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: Parcels 1 and 2 having a combined area of 22.24 hectares (54.940 ac.).

PARCEL I: SOUTH MESA 2

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

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with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence S 37°26'39" W a distance of 13,740.399 meters to THE TRUE POINT OF BEGINNING;

Thence N 64°30'45" E a distance of 153.168 meters; Thence S 23°43'29" E a distance of 61.353 meters; Thence S 18°26'12" E a distance of 24.804 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 380.682 meters, a radius of 345.391 meters, a chord bearing S 13°53'43" W, and a chord length of 361.703 meters;

Thence N 24°16'35" W a distance of 215.972 meters; Thence N 64°07'59" E a distance of 70.894 meters; Thence N 23°15'29" W a distance of 149.229 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 5.241 hectares (12.952 ac.).

PARCEL J: WIRE MOUNTAIN 1

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, all of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

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Thence S 36°19'08" E a distance of 118.209 meters; Thence S 49°19'11" E a distance of 59.687meters; Thence N 49°48'14" E a distance of 81.645

meters; Thence N 63°56'48" E a distance of 52.415 meters; Thence S 29°03'31" E a distance of 381.496 meters; Thence S 48°03'24" W a distance of 547.287 meters; Thence N 59°06'46" W a distance of 30.023 meters; Thence N 23°25'15" W a distance of 160.441 meters; Thence N 23°19'03" W a distance of 216.571 meters; Thence N 12°47'52" E a distance of 86.250 meters; Thence N 35°36'47" E a distance of 56.145 meters; Thence N 54°33'39" E a distance of 105.529 meters; Thence N 03°25'55" E a distance of 34.724 meters; Thence N 48°43'39" E a distance of 92.019 meters; Thence N 38°29'41" W a distance of 106.472 meters; Thence N 48°03'59" E a distance of 39.750 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 23.572 hectares (58.248 ac.).

PARCEL K: WIRE MOUNTAIN 2

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, all of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County. For the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence S 37°32'29" W a distance of 12730.943 meters to THE TRUE POINT OF BEGINNING;

Thence N 69°46'59" E a distance of 185.391 meters; Thence S 49°37'02" E a distance of 127.700 meters; Thence S 09°17'08" E a distance of 176.307 meters; Thence S 03°55'43" W a distance of 38.042 meters; Thence S 08°09'30" E a distance of 156.668 meters; Thence S 29°16'13" E a distance of 194.500 meters; Thence S 60°05'42" E a distance of 28.780 meters; Thence S 03°03'05" W a distance of 31.429 meters; Thence S 35°46'12" E a

distance of 100.093 meters; Thence S 27°57'12" E a distance of 69.499 meters; Thence S 16°51'45" E a distance of 41.658 meters; Thence S 24°41'50" E a distance of 60.105 meters; Thence S 28°23'15" E a distance of 113.886 meters; Thence S 47°42'11" W a distance of 199.113 meters; Thence N 82°23'54" W a distance of 146.546 meters; Thence N 50°27'35" W a distance of 12.359 meters; Thence N 27°22'31" W a distance of 15.155 meters; Thence N 30°46'36" W a distance of 73.528 meters; Thence N 21°44'16" W a distance of 43.740 meters; Thence N 30°42'04" W a distance of 35.929 meters; Thence N 19°13'44" E a distance of 66.837 meters; Thence N 35°22'04" W a distance of 76.732 meters; Thence S 55°22'06" W a distance of 24.278 meters; Thence N 71°40'22" W a distance of 63.481 meters; Thence N 27°34'39" W a distance of 86.889 meters; Thence N 13°06'50" W a distance of 34.158 meters; Thence N 31°38'45" E a distance of 47.036 meters; Thence N 35°48'34" W a distance of 14.019 meters; Thence N 77°42'30" W a distance of 112.714 meters; Thence N 44°52'18" W a distance of 58.703 meters; Thence N 23°14'50" W a distance of 187.278 meters; Thence N 21°53'58" W a distance of 116.551 meters; Thence N 32°10'29" E a distance of 71.660 meters; Thence N 51°13'18" E a distance of 12.394 meters; Thence N 67°42'26" E a distance of 71.089 meters; Thence N 26°41'39" E a distance of 45.350 meters; Thence N 05°25'14" W a distance of 58.357 meters; Thence N 81°45'33" E a distance of 51.039 meters; Thence N 37°05'38" E a distance of 18.293 meters; Thence N 31°46'56" W a distance of 49.061 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 40.192 hectares (99.317 ac.).

PARCEL L1: WIRE MOUNTAIN 3

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value

of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence S 37°34'36" W a distance of 14639.824 meters to THE TRUE POINT OF BEGINNING;

Thence N 66°51'15" E a distance of 259.724 meters; Thence N 79°31'33" E a distance of 8.308 meters; Thence N 78°23'23" E a distance of 5.177 meters; Thence N 66°27'48" E a distance of 12.103 meters; Thence N 57°57'21" E a distance of 5.575 meters; Thence N 48°40'17" E a distance of 10.195 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 5.298 meters, a radius of 11.009 meters, a chord bearing of N 62°27'31" E, and a chord length of 5.247 meters to a point known as point "A" for this description;

Thence through a non-tangent compound curve turning to the right, with an arc length of 13.840 meters, a radius of 10.716 meters, a chord bearing of S 66°45'23" E, and a chord length of 12.898 meters;

Thence S 26°52'53" E a distance of 9.826 meters; Thence S 35°52'17" E a distance of 29.259 meters; Thence S 32°58'35" E a distance of 10.378; Thence S 25°07'33" E a distance of 6.193 meters; Thence S 23°26'05" E a distance of 304.753 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 144.431 meters, a radius of 113.474 meters, a chord bearing of S 12°43'50" W, and a chord length of 134.877 meters;

Thence S 48°58'17" W a distance of 84.089 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 43.010 meters, a radius of 88.075 meters, a chord bearing of S 62°57'40" W, and a chord length of 42.584 meters;

Thence S 75°40'26" W a distance of 50.056 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 50.319 meters, a radius of 86.974 meters, a chord bearing of S 59°06'00" W, and a chord length of 49.620 meters;

Thence through a non-tangent reverse curve turning to the right, with an arc length of 14.242 meters, a radius of 8.573 meters, a chord bearing of N 89°53'03" W, and a chord length of 12.660 meters;

Thence N 44°48'18" W a distance of 29.363 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 371.573 meters, a radius of 590.140 meters, a chord bearing of N 26°46'02" W, and a chord length of 365.466 meters;

Thence N 08°43'45" W a distance of 63.164 meters; Thence N 15°33'39" W a distance of 37.270 meters; Thence N 22°08'49" W a distance of 9.055 meters to THE TRUE POINT OF BEGINNING.

PARCEL L2

Commencing at said point "A" as described above; Thence N 66°53'23" E a distance of 30.167 meters to THE TRUE POINT OF BEGINNING;

Thence N 66°52'40" E a distance of 138.286 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 14.112 meters, a radius of 9.050 meters, a chord bearing of S 68°27'07" E, and a chord length of 12.725 meters;

Thence S 18°59'42" E a distance of 190.742 meters; Thence S 12°47'52" W a distance of 86.250 meters; Thence S 23°19'03" E a distance of 216.571 meters; Thence S 75°13'30" W a distance of 109.685 meters; Thence N 08°15'01" W a distance of 41.171 meters; Thence N 02°05'19" W a distance of 32.716 meters; Thence N 15°34'40" W a distance of 32.714 meters; Thence N 23°23'46" W a distance of 302.601 meters;

Thence through a non-tangent curve turning to the left, with an arc length of 14.355 meters, a radius of 89.222meters, a chord bearing of N 28°00'19" W, and a chord length of 14.339 meters;

Thence N 35°51'41" W a distance of 28.099 meters; Thence N 32°02'43" W a distance of 10.736 meters;

Thence through a non-tangent curve turning to the right, with an arc length of 16.475 meters, a radius of 10.537 meters, a chord bearing of N 12°44'50" E, and a chord length of 14.847 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: Parcels 1 and 2 having a combined area of 22.234 hectares (54.940 ac.).

PARCEL M: **AREA 11 GOQ**

That certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940 in the Office of the County Recorder of San Diego County and a portion of Rancho Mission Viejo as shown on a Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, California, All of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp EL. 114.65'" on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a metric grid coordinate value of N629465.6521 meters, E1900331.8010 meters; Thence S 82°23'41" E a distance of 2833.038 meters (Record S 82°17'20" E a distance of 9283.09 feet) to horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858; Thence S 33°39'00" W a distance of 2647.215 meters to THE TRUE POINT OF BEGINNING;

Thence through a non-tangent curve to the left with an arc length of 20.369 meters, a radius of 12.773 meters, a chord bearing of N 80°03'17 E, and a chord length of 18.278 meters;

Thence N 42°14'37" E a distance of 115.386 meters;

Thence through a non-tangent curve to the right with an arc length of 27.137 meters, a radius of 31.758 meters, a chord bearing of N 59°57'00" E, and a chord length of 26.319 meters;

Thence N 86°07'48" E a distance of 108.270 meters; Thence N 24°19'20" E a distance of 10.910 meters; Thence N 86°29'24" E a distance of 46.763 meters; Thence S 54°47'18" E a distance 17.523 meters; Thence S25°16'35" W a distance of 10.716 meters;

Thence through a non-tangent curve to the right with an arc length of 35.150 meters, a radius of 18.750 meters, a chord bearing of S 37°58'42" W, and a chord length of 30.225 meters;

Thence S 07°33'51" E a distance of 22.597 meters; Thence S 64°00'03" W a distance of 51.621 meters; Thence N 19°35'25" W a distance of 17.349 meters; Thence S 72°35'20" W a distance of 37.998 meters; Thence S 49°14'21" W a distance of 31.428 meters; Thence S 75°16'51" W a distance of 50.009 meters; Thence S 43°58'30" W a distance of 59.206 meters; Thence N 48°15'57" W a distance of 59.220 meters; Thence S 41°34'14" W a distance of 6.755 meters;

Thence through a non-tangent curve to the left with an arc length of 21.575 meters, a radius of 15.329 meters, a chord bearing of S 06°23'00" E, and a chord length of 19.837 meters;

Thence N 45°34'02" W a distance of 32.831 meters to THE TRUE POINT OF BEGINNING.

CONTAINING: 1.969 hectares (4.866 ac.).

PARCEL N: MCRD SAN DIEGO

A PORTION OF THE U.S. MARINE CORPS RECRUIT DEPOT AS SHOWN ON RECORD OF SURVEY MAP NO. 15746 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE GPS STATION NO. 1027 ON RECORD OF SURVEY MAP NO. 15746
(FOUND 1 3/4 " BRASS PLUG WITH PUNCH MARK AND STAMPED "1027" IN CONCRETE WALK PER R.O.S. NO. S 9050 14492 & 15213 AND C.R. NO. 10,900 WITH COORDINATES
N 1851225.43, E 6266638.45);

THENCE S62°20'11" E A DISTANCE OF 605.38 FEET; TO THE TRUE POINT OF BEGINNING;

THENCE N 03°57'58" W A DISTANCE OF 4.63 FEET; THENCE N 07°33'33" E A DISTANCE OF 116.27 FEET; THENCE N 21°45'18" E A DISTANCE OF 38.85 FEET; THENCE S 68°42'47" E A DISTANCE OF 18.92 FEET; THENCE N 69°43'47" E A DISTANCE OF 143.36 FEET; THENCE N 23°01'12" W A DISTANCE OF 30.00 FEET; THENCE N66°58'48" E A DISTANCE OF 165.60

FEET; THENCE S 23°01'12" E A DISTANCE OF 30.00 FEET; THENCE N 66°58'48" E A DISTANCE OF 40.38 FEET; THENCE N 23°01'12" W A DISTANCE OF 55.48 FEET; THENCE N 66°58'48" E A DISTANCE OF 124.89 FEET; THENCE N 85°35'38" E A DISTANCE OF 97.04 FEET; THENCE S 44°42'36" E A DISTANCE OF 94.12 FEET; THENCE S 19°17'09"E A DISTANCE OF 72.80 FEET; THENCE N 78°28'56" E A DISTANCE OF 10.09 FEET; THENCE S 19°17'09"E A DISTANCE OF 10.10 FEET;

THENCE THROUGH A NON-TANGENT CURVE TURNING TO THE RIGHT, WITH AN ARC LENGTH OF 162.56 FEET, A RADIUS OF 882.45 FEET, A CHORD BEARING OF N 84°10'33" E, AND A CHORD LENGTH OF 162.33 FEET;

THENCE N 00°13'21" W A DISTANCE OF 10.00 FEET; THENCE N 89°46'39" E A DISTANCE OF 10.00 FEET; THENCE S 00°13'21" E A DISTANCE OF 10.00 FEET;

THENCE THROUGH A NON-TANGENT CURVE TURNING TO THE RIGHT, WITH AN ARC LENGTH OF 48.85 FEET, A RADIUS OF 882.45 FEET, A CHORD BEARING OF S 88°18'42" E, AND A CHORD LENGTH OF 48.85 FEET;

THENCE THROUGH A NON-TANGENT REVERSE CURVE TURNING TO THE LEFT, WITH AN ARC LENGTH OF 85.58 FEET, A RADIUS OF 63.32 FEET, A CHORD BEARING OF N 49°22'29" E, AND A CHORD LENGTH OF 79.21 FEET,

THENCE THROUGH A NON-TANGENT REVERSE CURVE TURNING TO THE RIGHT, WITH AN ARC LENGTH OF 38.34 FEET, A RADIUS OF 400.00 FEET, A CHORD BEARING OF N 12°49'44" E, AND A CHORD LENGTH OF 38.32 FEET;

THENCE N 70°37'03" W A DISTANCE OF 10.00 FEET; THENCE N 19°22'57" E A DISTANCE OF 10.00 FEET; THENCE S 70°37'03" E A DISTANCE OF 10.00 FEET;

THENCE THROUGH A NON-TANGENT CURVE TURNING TO THE RIGHT, WITH AN ARC LENGTH OF 263.31 FEET, A RADIUS OF 486.73 FEET, A CHORD BEARING OF N 35°12'13" E, AND A CHORD LENGTH OF 260.12 FEET;

THENCE N 38°22'49" W A DISTANCE OF 10.00 FEET; THENCE N 51°37'11" E A DISTANCE OF 10.00 FEET; THENCE S 38°22'49" E A DISTANCE OF 10.00 FEET;

THENCE THROUGH A NON-TANGENT CURVE TURNING TO THE RIGHT, WITH AN ARC LENGTH OF 37.41 FEET, A RADIUS OF 486.73 FEET, A CHORD BEARING OF N 54°02'35" E, AND A CHORD LENGTH OF 37.40 FEET;

THENCE N 55°11'51" E A DISTANCE OF 28.07 FEET; THENCE S 33°57'38" E A DISTANCE OF 21.38 FEET; THENCE S 54°39'54" W A DISTANCE OF 61.94 FEET;

THENCE THROUGH A NON-TANGENT CURVE TURNING TO THE LEFT, WITH AN ARC LENGTH OF 220.57 FEET, A RADIUS OF 445.26 FEET, A CHORD BEARING OF S 38°55'42" W, AND A CHORD LENGTH OF 218.32 FEET;

THENCE THROUGH A NON-TANGENT COMPOUND CURVE TURNING TO THE LEFT, WITH AN ARC LENGTH OF 101.62 FEET, A RADIUS OF 349.85 FEET, A CHORD BEARING OF S 16°24'56" W, AND A CHORD LENGTH OF 101.27 FEET;

THENCE THROUGH A NON-TANGENT COMPOUND CURVE TURNING TO THE LEFT, WITH AN ARC LENGTH OF 20.22 FEET, A RADIUS OF 18.14 FEET, A CHORD BEARING OF N 23°50'21" W, AND A CHORD LENGTH OF 19.19 FEET;

THENCE THROUGH A NON-TANGENT REVERSE CURVE TURNING TO THE RIGHT, WITH AN ARC LENGTH OF 79.78 FEET, A RADIUS OF 40.96 FEET, A CHORD BEARING OF S 00°01'22" W, AND A CHORD LENGTH OF 67.76 FEET;

THENCE THROUGH A NON-TANGENT REVERSE CURVE TURNING TO THE LEFT, WITH AN ARC LENGTH OF 23.70 FEET, A RADIUS OF 20.15 FEET, A CHORD BEARING OF S 22°07'10" W, AND A CHORD LENGTH OF 22.36 FEET;

THENCE S 11°51'49" E A DISTANCE OF 50.28 FEET;

THENCE THROUGH A NON-TANGENT CURVE TURNING TO THE LEFT, WITH AN ARC LENGTH OF 309.80 FEET, A RADIUS OF 363.66 FEET, A CHORD BEARING OF S 40°00'58" E, AND A CHORD LENGTH OF 300.52 FEET;

THENCE S 69°57'21" E A DISTANCE OF 25.41 FEET; THENCE S 88°34'36"E A DISTANCE OF 22.50 FEET; THENCE S 77°46'55" W A DISTANCE OF 215.39 FEET;

THENCE S77°47'19" W A DISTANCE OF 257.45 FEET; THENCE S 76°59'33" W A DISTANCE OF 46.75 FEET; THENCE S 75°23'14" W A DISTANCE OF 44.56 FEET; THENCE S 74°05'03" W A DISTANCE OF 92.65 FEET; THENCE S 72°15'25" W A DISTANCE OF 49.30 FEET; THENCE N 08°15'23" W A DISTANCE OF 152.91 FEET; THENCE S 78°30'29" W A DISTANCE OF 354.88 FEET;

THENCE N40°28'21" W A DISTANCE OF 240.66 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING: 4.258 HECTARES ± (10.52 ACRES ±)

PARCEL O: COLEVILLE HOUSING

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF MONO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

TOGETHER WITH PARCELS 1,2,3, AND 4 OF PARCEL MAP NO. 31-49 IN THE COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGES 70, 70-A AND 70-B OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF MONO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, SHOWN AS A 60.00 FOOT STRIP OF LAND ON PARCEL MAP NO. 31-49, RECORDED IN BOOK 2, PAGES 70, 70-A, AND 70-B OF PARCEL MAPS, RECORDS OF SAID COUNTY , AND BEING PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR A POINT OF REFERENCE AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST, M.D.M., THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, NORTH 0°07'23" WEST 518.98 FEET TO THE TRUE POINT OF BEGINNING:

1. THENCE ALONG THE NORTH LINE OF PARCELS 3 AND 4 PER SAID PARCEL MAP NO. 31-49, SOUTH 89°52'53" EAST 595.10 FEET TO THE WESTERLY LINE OF U.S. HIGHWAY 395;

2. THENCE ALONG SAID WESTERLY LINE, NORTH 26°11'08" WEST 66.95 FEET TO THE SOUTH LINE OF PARCEL 2 PER SAID PARCEL MAP NO. 31-49;

3. THENCE ALONG SAID SOUTH LINE, NORTH 89°52'53" WEST 565.68 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36;

4. THENCE ALONG SAID WEST LINE, SOUTH 0°07'23" EAST 60.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING FROM THE NORTHWEST CORNER OF SAID SECTION 36
THENCE S 60°07'05" E A DISTANCE OF 299.200 METERS TO THE TRUE POINT OF BEGINNING;
THENCE N 65°45'09" E A DISTANCE OF 19.983 METERS;
THENCE S 24°14'51" E A DISTANCE OF 15.998 METERS;
THENCE S 65°45'09" W A DISTANCE OF 19.983 METERS;
THENCE N 24°14'51" W A DISTANCE OF 15.998 METERS TO THE TRUE POINT OF BEGINNING.

CONTAINING: 23.152 hectares (57.211 ac.).

Parcel P:

Easements including but not limited to the right of access to and use of the streets, roads, electric, gas telephone, water and sewer facilities now or in the future appurtenant to the above described property as defined and granted in that certain Real Estate Ground Lease, memoranda of which were recorded September 30, 2003 as File No. 2003010766 of the Official Records of Mono County and as File No. 20031202232 of the Official Records of San Diego County, by and between the United States of America, Department of the Navy, as Lessor and Hunt Lincoln Clark Family Communities, LLC, as Lessee, Dated October 1, 2003, subject to the terms and conditions contained therein.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] of requested review for Design Materials and Design Work. The Company acknowledges that the design subcontractor and/or its consultants will not stop work during the review and approval period and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the [redacted] lay review time, then after [redacted] ays written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work:

   a. Design Development: 100% Design Development documents will be submitted for review and approval. The 100% Design Development package will include Civil and Architectural documents and summary Specifications with sufficient detail to demonstrate design intent and substantial conformance to RFP requirements. The Architectural Documents will include 1/4 scale unit plans, 1/8 scale building plans and elevations, and an architectural site plan. The Civil Documents will include grading and improvement plans with preliminary road and utility profiles.

   b. Construction Documents: Review and approval will occur at 50% and 100% completion of the Construction Documents. The 50% level of completion will coincide with submission of the Construction Documents to the City of San Diego for permit and first plan check. At this time the

Company will review all drawings and specifications. The Company will give final approval of all Drawings and Specifications upon review of the 100% Construction Documents.

5. The Design/Builder shall provide a submittal register detailing the items to be submitted by the Design/Builder to the Company for approval within 1 [redacted] The Company shall review and approve this list within [redacted] days from receipt of the register. The Design/Builder will then provide submittals for review and approval in accordance with the register. The Company shall approve individual submittals submitted by the Design/Builder [redacted]

6. Notwithstanding the foregoing, if the Design/Builder and/or a Design Subcontractor determine that the Company's approval of a specific component, item, or system is required to continue the Design Work in accordance with the Schedule, and such approval is not described above, the Company shall give its approval in accordance with paragraph 2 above.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

Camp Pendleton ("the Company") Representatives:

[redacted]

Exh. K-1

Exh. K-2

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Venture evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a
person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability
Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits.
Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

Exh. L-2

7. The Design/Builder will endorse the Commercial General Liability and Umbrella Policies to include the Company and Department of Navy as Additional Insured's using Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and Department of Navy.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per Schedule L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Venture's usual liability Insurance, if desired. Optionally, the Company may purchase and maintain other insurance for Self-protection against claims which may arise from operations under the Contract. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

Exh. M-3

Exh. M-4

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[redacted]

Exh. N-1-2

Exh. N-1-3

[redacted]

Exh. N-1-4

Exh. N-1-5

Exh. N-1-6

CO-OBLIGEE RIDER

Exh. N-1-7

EXHIBIT N-2

FORM OF SUBCONTRACTOR BONDS

Exh. N-2-2

CO-OBLIGEE'S DUAL OBLIGEE RIDER

Exh. N-2-3

Exhibit "C"

PERFORMANCE BOND

(Subcontract)

EXHIBIT O

EXHIBIT P

DAVIS BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to as "Contractor" or "Prime Contractor") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision, and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division

Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or

costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX 13

DAVIS BACON WAGE DETERMINATION

CA020001 MOD 20 (17 JAN 03) AND

CA020028 MOD 24 (24 JAN 03)

General Decision Number CA020001 MOD 20

General Decision Number CA020001
Superseded General Decision No. CA010001
State: California
Construction Type:
BUILDING
DREDGING
HEAVY
HIGHWAY
RESIDENTIAL
County(ies):
SAN DIEGO
BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/01/2002
1	03/08/2002
2	03/29/2002
3	04/19/2002
4	05/10/2002
5	06/07/2002
6	06/28/2002
7	07/05/2002
8	07/19/2002
9	08/02/2002
10	08/09/2002
11	08/23/2002
12	09/06/2002
13	09/20/2002
14	10/04/2002
15	10/25/2002
16	11/08/2002
17	12/13/2002
18	01/03/2003
19	01/10/2003
20	01/17/2003

COUNTY(ies):
SAN DIEGO

Exh. P-6

General Decision Number CA020028 MOD 24

Superseded General Decision No. CA010028

State: California

Construction Type:
RESIDENTIAL

County(ies):

IMPERIAL	RIVERSIDE	SANTA BARBARA
LOS ANGELES	SAN BERNARDINO	VENTURA
ORANGE	SAN LUIS OBISPO	

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/01/2002
1	03/08/2002
2	03/22/2002
3	03/29/2002
4	04/19/2002
5	05/10/2002
6	05/17/2002
7	06/07/2002
8	07/05/2002
9	07/19/2002
10	08/02/2002
11	08/09/2002
12	08/16/2002
13	08/23/2002
14	09/06/2002
15	09/20/2002
16	10/04/2002
17	10/25/2002
18	11/08/2002
19	11/29/2002
20	12/13/2002
21	01/03/2003
22	01/10/2003
23	01/17/2003
24	01/24/2003

COUNTY(ies):

IMPERIAL	RIVERSIDE	SANTA BARBARA
LOS ANGELES	SAN BERNARDINO	VENTURA
ORANGE	SAN LUIS OBISPO	

Exh. P-7

EXHIBIT G-3

PHASE II DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

PHASE II DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

[redacted] as Design/Builder

Dated as of October 1, 2004

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PHASE II DESIGN/BUILD AGREEMENT

This Phase II Design/Build Agreement (this "**Agreement**") dated as of October 1, 2004 and effective for all purposes as of October 15, 2004 (the "**Effective Date**"), is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**") and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.2 "**Agreement**" means this Phase II Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.3 "**Alternate**" shall have the meaning set forth in Section 9.3 hereof.

1.4 "**Amended and Restated Operating Agreement**" means that certain Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2004.

1.5 "**Applicable Laws**" means all laws (including, without limitation, the Davis Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.6 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.7 "**Architect**" means

1.8 **"Authorized Representatives"** means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.9 **"Certificate of Substantial Completion"** means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Work or applicable portion thereof is Substantially Complete.

1.10 **"Certificate of Final Completion"** means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Project or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.11 **"Change Directive"** means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.12 **"Change Order"** means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.13 **"Change Proposal"** means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.14 **"Civil Engineer"** means

1.15 **"Claims"** shall have the meaning set forth in Section 2.3.1.2 hereof.

1.16 **"Company Event of Default"** shall have the meaning set forth in Section 12.3 hereof.

1.17 **"Company Indemnified Parties"** means the Company, its members, agents, partners and employees.

.

1.19 **"Construction Documents"** means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and

modifications to the Plans and Specifications must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.20 "Construction Notice to Proceed" means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.21 "Construction Phase" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.22 "Construction Work" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.23 "Contract Documents" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.24 "Contract Time" means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.25 "Contractor" means

1.26 "Contingency" shall have the meaning set forth in Section 5.17.

1.27 "Cost of the Work" consists of those items of Work which are paid for by the Company to the Design/Builder, and consist of those categories of costs set forth as allowable on Exhibit D.

1.28 "CPM" means a critical path method schedule in the form of precedents, networks and time sequences.

1.29 "Credit Provider" shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.30 "Day" or "Days" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. **"Business Day"** or **"Business Days"** means Days other than weekend, national or local holidays in which federal or state government agencies in the State of Arizona are open for business.

1.31 "Design/Builder" means

1.32 "Design/Builder Event of Default" shall have the meaning set forth in Section 12.1 hereof.

1.33 "Design/Builder Indemnified Parties" means the Design/Builder, Contractor and the Architect and its and their partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.34 "Design Group" means all architects and engineers having a contract with the Design/Builder to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.35 "Design Materials" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.36 "Design Phase" means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.37 "Design Work" means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.38 "Environmental Documents" means the environmental documents listed on Exhibit C.

1.39 "Excusable Delay" shall have the meaning set forth in Section 4.6.1 hereof.

1.40 "Fee" means the fee payable to the Design/Builder, [redacted]

1.41 "Final Completion" or "Finally Complete" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.42 "First Mortgage Loan Documents" shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.43 "Force Majeure" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other

than the Design/Builder, Subcontractors and Team Subcontractors), extreme weather conditions, material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the Design/Builder.

1.45 "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.46 "Hazardous Materials" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ss. 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. ss 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. Section 6991.

1.47 **"Inexcusable Delay"** shall have the meaning set forth in Section 4.6.1.

1.48 **"Landscaping Work"** shall have the meaning set forth in Exhibit A.

1.49 **"Liquidated Damages"** shall have the meaning set forth in Section 4.6.4.

1.50 **"Managing Member"** means [redacted] which is the managing member of the Company.

1.51 **"Modification"** means an amendment to this Agreement executed by the Parties after the Effective Date.

1.52 **"Notice to Begin Design"** means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.53 **"Order of Magnitude Documents"** means the drawings, specifications and other documents prepared for the Design/Builder by the Architect (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Order of Magnitude Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.54 **"OSHA"** shall have the meaning set forth in Section 10.2.2 hereof.

1.55 **"Overhead"** means [redacted] f.

1.56 **"Party" or "Parties"** means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.57 **"Payment and Performance Bonds"** means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of

the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor, as required under the Phase II Construction Agreement.

1.58 **"Phase II Construction Agreement"** means that certain Phase II Construction Agreement between the Contractor and the Design/Builder dated as of October 1, 2004, as amended and modified from time to time.

1.59 **"Phase II Construction Consultant"** shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.61 **"Phase II Offer"** shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.62 **"Phase II RFP"** shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.63 **"Phases"** means the construction phases of the Project described in Exhibit G, as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Phase II Construction Agreement are initially included as alternates under the Phase II Construction Agreement and will be incorporated into the Phase II Construction Agreement by change order prior to the commencement of each such Phase.

1.64 **"Project"** means the facilities to be known as Marine Corps Air Station Yuma, Yuma County, Arizona, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.65 **"Punch list"** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.66 **"Rehabilitation Work"** shall mean the rehabilitation of existing residential units as more fully described in Exhibit A.

1.67 **"Retainage"** means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.69 **"Schedule"** means the schedule attached hereto as Exhibit H. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.70 "Scheduled Date of Substantial Completion" means those dates the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.71 "Self-Performed Work" shall have the meaning set forth in Section 8.3 hereof.

1.72 "Separate Contractors" means those individuals or entities (other than the Team Subcontractors) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.73 "Site" is the real property on which the Project will be located, which is more fully described on Exhibit I hereto, and any other real property on which the Work will be performed.

1.74 "Subcontract" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work.

1.75 "Subcontractor" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.76 "Substantial Completion" or "Substantially Complete" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.77 "Surety" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.78 "Team Subcontract" means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement.

1.79 "Team Subcontractors" means the Contractor and the Architect.

1.80 "Trustee" shall have the meaning set forth in the Amended and Restated Operating Agreement.

1.81 "United States Member" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.82 "Work" or "Scope of Work" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work, Rehabilitation Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the date(s) of Substantial Completion set forth in the Schedule attached as Exhibit H, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder hereby assigns outright and exclusively to the Company all copyrights in the design appearance of the Project. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each

such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims from such for claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if the Phase II Design/Build Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Project characterization reports listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all existing above and below grade structures in the Scope of Work including the removal of any Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Phase II RFP or Project characterization reports listed on Exhibit C, or known as of the Effective Date by the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing

utilities in place if they do not interfere with new construction. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place. Any other Hazardous Materials besides the ones specifically identified in this Section 2.4.2 are not included in the Scope of Work.

2.5 Order of Magnitude Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Order of Magnitude Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Order of Magnitude Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Order of Magnitude Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibits H and J hereto, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the durations and procedures set forth in Exhibits H and J hereto.

2.6 Legal Requirements.

2.6.1 The Design/Builder shall:

2.6.1.1 Comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between local laws, codes, ordinances, rules, regulations and orders and this Agreement or the Contract Documents, the Design/Builder is required to comply with local laws, codes, ordinances, rules, regulations and orders, but the Design/Builder shall be entitled to a Change Order adjusting t Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Phase II Construction Consultant and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within ten (10) Business Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Phase II Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and

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

2.8.2 Rehabilitation Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Rehabilitation Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase II Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase II Offer and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion of such building or group of buildings. If within [illegible] after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of

the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to fter Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work a have been distributed to the Company, .

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Omitted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct it in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time, the Company may remove it and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage withi Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1.

2.8.9 Acceptance of Work. If the Company prefers to accept Construction Work, Rehabilitation Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may instead of requiring its reperformance, [redacted] If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work [redacted] have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company [redacted]

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

[redacted]

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Phase II Construction Consultant, the United States Member and their respective authorized designees access to the Project Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Site.

The Design/Builder shall prepare a Mobilization Plan, prior to the start of each phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company. The **"Mobilization Plan"** shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization

Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in th Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is an change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the edule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 **"Shop Drawings"** are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 **"Product Data"** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 **"Samples"** are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Phase II Construction Consultant, and the Resident Officer in Charge of Construction (**"ROICC"**) timely notice of when and where tests and inspections are to be made so that the Company, the Phase II Construction Consultant, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid as a Cost of the Work.

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a *representation* that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to

the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond such liens withi[redacted] Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond such liens within such [redacted] Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may bond such liens and charge the cost of the bond and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching site utilities, materials, or other site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably

withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule [redacted] he costs of such uncovering and replacement shall be a Cost of the Work.

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company a[redacted] An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design/Builder shall pay such costs as a Cost of the Work, unless such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with

respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be Cost of the Work. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work.

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architect's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the

Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such second Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion Dates for each building. The dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for each Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available any or all of the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company to or the Design/Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than [redacted] Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the

approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within [redacted] Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within [redacted] Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Comp[redacted].

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the scheduled date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages in an amount [redacted]

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1.1 General.

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5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

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5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (to include the United States Member) have agreed upon the schedule of values shown in Exhibit E, which set forth the various portions of the Work, [redacted] This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering t[redacted] Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the fifteenth (15th) Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than fifteen (15) Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within five (5) Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

[redacted]

5.5 Retainage.

5.5.1 With respect to the Design Work, [redacted]

5.5.2 With respect to Construction Work, [redacted] Retainage on each Phase shall be withheld until the Phase is [redacted] complete; thereafter, no further Retainage will be withheld on that Phase. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, less [redacted] of the value of any uncompleted Work or Punch list items relating to such

building. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

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When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder withir Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule shall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 Substantial Completion.

When the Design/Builder considers that a building is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later tha days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall

commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building or phase of the Project is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building or phase and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building or phase, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the

Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

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Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.14.4 The GMP will be adjusted accordingly by Change Order in accordance with the provisions of Section 6.5. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 5.14.2 and 5.14.3 plus Fee on such difference in accordance with Section 6.5 if the actual costs are greater than the allowances.

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

[redacted] Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted. [redacted]

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of [redacted] must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive withi[redacted] Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in t[redacted]e Schedule. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in th[redacted] Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. [redacted] When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedule [redacted] such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within ays after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on account of Change Orders and/or Excusable Delays.

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6.5.2 Design Work. For Change Orders including additional Design Work,

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6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A,

6.6 Changes on Account of Delay in Commencement of Work.

6.7 Changes on Account of Escalation in Costs.

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of each building, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Architect pursuant to which the Design/Builder shall delegate the design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a valu The Design/Builder will then select the subcontractor that represents the best value for the Project. e

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work on the Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees [redacted] Prior to the commencement of the Work on any alternate under the Phase II Construction Agreement ("**Alternate**"), a Surety that issued the Payment Bond and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment Bond and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Phase II Construction Agreement, as and when provided in the Phase II Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees and shall be in the forms set forth on Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder. [redacted]

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Section 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4).

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger its safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during suc Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative .

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) Business Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute:

During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Business Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a **"Design/Builder Event of Default"**:

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited

to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated withi Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon a Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of [redacted] Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Amended and Restated Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs,

including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within [redacted] Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to t[redacted] Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of Arizona, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Contract and the Contact Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

[redacted]

Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreement Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374 5065
Attn: Special Venture Acquisition Department
Reference: Camp Pendleton & Quantico PPV

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

No Modifications or Change Orders shall be valid unless in writing and signed by the Company and the Design/Builder or their respective permitted successors and assigns. The

Design/Builder and the Company agree to make Modifications to this Agreement if requested by the Company's lender(s), the Credit Provider and the Trustee provided such Modifications do not adversely affect the costs and/or risks and/or time of performance of the Work.

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in good faith to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Phase II Design/Builder's Consent Agreement dated as of October 1, 2004 executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records

involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until [redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

CAMP PENDLETON & QUANTICO HOUSING, LLC, a Delaware limited liability company

By: Hunt Lincoln Clark Family Communities LLC, a Delaware limited liability company, its Managing Member

[redacted]

[Signature Page to Phase II Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN/BUILDER:

[Signature Page to Phase II Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
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Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
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EXHIBIT A

SCOPE OF WORK

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Attachment A – Finish and Equipment Schedule

Attachment B – Index to Order of Magnitude Drawings (dated 1 Oct 2004)

Attachment C – Renovation Scope of Work Matrix

EXHIBIT A

ATTACHMENT A

[See Attached]

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

[See Attached]

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

- Environmental Baseline Survey for MCAS Yuma Housing, San Onofre Mobile Home Park, San Mateo Point Housing
- General Decision Number AZ030020, Mod-0 dated 13-Jun-03 Davis-Bacon Wage Determination — June 13, 2003
- Phase II Environmental Site Assessment [redacted] — August 19, 2004
- Asbestos/Hazardous Materials Building Survey to Facilitate Demolitions [redacted] — August 19, 2004
- Soils Report with Boring Logs Terracon, Tempe Arizona — August 31, 2004
- SWPPP Storm Water Pollution Prevention Plan [redacted] — October 26, 2004
- Construction Plans and Specifications MCAS Yuma See following Pages 1-5

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FINAL "ORDER OF MAGNITUDE" DRAWINGS

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EXHIBIT D

COST OF THE WORK

Exh. D-3

Exh. D-4

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EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible.

Arizona Regional Water Quality Control Board

Submission of site grading and construction information to the Arizona Regional Water Quality Control Board as required, to obtain a storm water permit and/or approval of the Storm Water Pollution and Protection Plan(s) ("**SWPPP**").

Code Compliance

Obtain written approval of all plans and specifications from TMAD Civil pursuant to the Phase II Code Compliance Agreement dated as of even date herewith. Plans and specifications will be submitted in accordance with Exhibit J of this Agreement.

Utilities

The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV.

Group Approvals

Currently there are no known required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from citizen groups, associations, etc.

Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the sites, such approvals shall be the responsibility of the Company.

EXHIBIT G

PROJECT PHASES

[redacted]

EXHIBIT H

SCHEDULE

[See Attached]

Exh. H-2

Exh. H-3

EXHIBIT I

SITE DESCRIPTION

The property defined as the "Phase II Property" in the Amended and Restated Operating Agreement.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] lays of requested review for Design Materials and Design Work. The Company acknowledges that the design subcontractor and/or its consultants will not stop work during the review and approval period and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the [redacted] lay review time, then aft[redacted] ays written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work:

   a. Design Development: 100% Design Development documents will be submitted for review and approval. The 100% Design Development package will include Civil and Architectural documents and summary Specifications with sufficient detail to demonstrate design intent and substantial conformance to RFP requirements. The Architectural Documents will include 1/4 scale unit plans, 1/8 scale building plans and elevations, and an architectural site plan. The Civil Documents will include grading and improvement plans with preliminary road and utility profiles.

   b. Construction Documents: Review and approval will occur at 50% and 95% completion of the Construction Documents and at 100% backcheck. The Company will give final approval of all Drawings and Specifications upon review of the 100% Construction Documents.

5. The Design/Builder shall provide a submittal register detailing the items to be submitted by the Design/Builder to the Company for approval withi days of the execution of this Agreement. The Company shall review and approve this list within days from receipt of the register. The Design/Builder will then provide submittals for review and approval in accordance with the register. The Company shall approve individual submittals submitted by the Design/Builder withi days of receipt.

6. Notwithstanding the foregoing, if the Design/Builder and/or a Design Subcontractor determine that the Company's approval of a specific component, item, or system is required to continue the Design Work in accordance with the Schedule, and such approval is not described above, the Company shall give its approval in accordance with paragraph 2 above.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

Exh. K-2

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Venture evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of Arizona where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

7. The Design/Builder will endorse the Commercial General Liability and Umbrella Policies to include the Company and Department of Navy as Additional Insured's using or its equivalent. Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and Department of Navy.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Venture's usual liability Insurance, if desired. Optionally, the Company may purchase and maintain other insurance for Self-protection against claims which may arise from operations under the Contract. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[See Attached]

Performance Bond

[redacted]

EXHIBIT N-2

FORM OF SUBCONTRACTOR BONDS

Exh. N-2-2

CO-OBLIGEE RIDER

Exh. N-2-3

EXHIBIT O

Exh. O-3

EXHIBIT P

DAVIS BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to as **"Contractor"** or **"Prime Contractor"**) shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision (attached hereto as Appendix 13), and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division

Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or

costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX 13

DAVIS BACON WAGE DETERMINATION

[See Attached]

Davis-Bacon Wage Determination

Appendix 5 contains Davis-Bacon Wage Determination as of 6/30/03 for Yuma, Arizona. It is the offerors responsibility to obtain and incorporate updated information at http://www.wdol.gov/. Updated information will be provided by the DON upon request.

General Decision Number AZ030020 06/13/2003 AZ20

Superseded General Decision No. AZ020020

State: Arizona

Construction Type:
RESIDENTIAL

County(ies):
YUMA

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	06/13/2003

COUNTY(ies):
YUMA

SUAZ4004A 10/28/1994

	Rates	Fringes
BRICKLAYERS	14.00	
CABINET INSTALLERS	8.00	
CARPENTERS (Including Frame Work; excluding Batt & Blown Insulator)	9.25	
CEMENT MASONS (Including Cement Finisher)	9.67	
DRYWALL HANGERS	11.30	

DRYWALL TAPERS	11.85		
ELECTRICIANS	9.58		
GLAZIERS	8.91	1.48	
HEATING & A.C. MECHANIC (Piping only)	9.22	1.00	
INSULATORS, BATT & BLOWN	9.00	2.40	
LABORERS:			
General	5.94		
Landscape	5.15		
LATHERS	10.00		
PAINTERS (Including Brush, Roller, Spray; excluding Tapers)	11.18		
PLASTERERS	11.22		
PLUMBERS/PIPEFITTERS	10.67		
POWER EQUIPMENT OPERATOR:			
Backhoe	11.10		
ROOFERS (Including Tile)	8.40	.15	
SHEET METAL WORKERS, HVAC	8.66	.40	
SOFT FLOOR LAYERS (Including Carpet)	11.00	.10	
SPRINKLER FITTER, IRRIGATION	6.00		
TILE SETTERS	12.21	.60	
TRUCK DRIVER:			
2 AXLE	8.50		

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be

prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U. S. Department of Labor

200 Constitution Avenue, N. W.
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

□

If the Contractor performs any construction at San Mateo Point Family Housing Site, the appropriate Davis-Bacon Wage Determination shall apply.

EXHIBIT G-4

PHASE III DESIGN/BUILD AGREEMNET

[See Attached]

EXECUTION COPY

PHASE III DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

[redacted] as Design/Builder

Dated as of October 1, 2005

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PHASE III DESIGN/BUILD AGREEMENT

This Phase III Design/Build Agreement (this "**Agreement**") dated as of October 1, 2005 (the "**Effective Date**"), is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**") and the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "Affiliate" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.2 "Agreement" means this Phase III Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.3 "Alternate" shall have the meaning set forth in Section 9.3 hereof.

1.4 "Amended and Restated Operating Agreement" means that certain Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2004, as amended by that certain First Amendment to Amended and Restated Operating Agreement of even date herewith.

1.5 "Applicable Laws" means all laws (including, without limitation, the Davis Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the applicable Sites and/or the Work.

1.6 "Application for Payment" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.7 "Architect" mean

1.8 "Authorized Representatives" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.9 "Certificate of Substantial Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Work or applicable portion thereof is Substantially Complete.

1.10 "Certificate of Final Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Project or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.11 "Change Directive" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.12 "Change Order" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.13 "Change Proposal" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.14 "Civil Engineer" means

1.15 "Claims" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.16 "Company Event of Default" shall have the meaning set forth in Section 12.3 hereof.

1.17 "Company Indemnified Parties" means the Company, its members, agents, partners and employees.

.

1.19 "Construction Agreements" means the Twentynine Palms Construction Agreement and the Kansas City Construction Agreement (each of which may be referred to herein individually as a **"Construction Agreement"**).

1.20 "Construction Consultants" means the Twentynine Palms Construction Consultant and the Kansas City Construction Consultant (each of which may be referred to herein individually as a **"Construction Consultant"**).

1.21 "Construction Documents" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Plans and Specifications must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.22 "Construction Notice to Proceed" means the notice given by the Company to the Design/Builder stating that a Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.23 "Construction Phase" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.24 "Construction Work" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractors.

1.25 "Contract Documents" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.26 "Contract Time" means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.27 "Contractors" means the [redacted] and the [redacted], or such other general contractors that the Design-Builder retains to perform the Work (each of which may be referred to herein individually as a **"Contractor"**).

1.28 "Contingency" shall have the meaning set forth in Section 5.17.

1.29 "Cost of the Work" consists of those items of Work which are paid for by the Company to the Design/Builder, and consist of those categories of costs set forth as allowable on Exhibit D. [redacted]

1.30 "CPM" means a critical path method schedule in the form of precedents, networks and time sequences.

1.31 "Credit Provider" shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.32 "Day" or "Days" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. **"Business Day"** or **"Business Days"** means Days other than weekend, national or local holidays in which federal or state government agencies in the State of California (as to Work at the Twentynine Palms Site) or the State of Missouri (as to Work at the Kansas City Site) are open for business.

1.33 "Design/Builder" means

1.34 "Design/Builder Event of Default" shall have the meaning set forth in Section 12.1 hereof.

1.35 "Design/Builder Indemnified Parties" means the Design/Builder, Contractors and the Architect and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.36 "Design Group" means all architects and engineers having a contract with the Design/Builder to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.37 "Design Materials" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.38 "Design Phase" means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.39 "Design Work" means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.40 "Environmental Documents" means the environmental documents listed on Exhibit C.

1.41 "Excusable Delay" shall have the meaning set forth in Section 4.6.1 hereof.

1.42 "Fee" means the fee payable to the Design/Builder.

1.43 "Final Completion" or "Finally Complete" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.44 "First Mortgage Loan Documents" shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.45 "Force Majeure" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, interruption of utilities, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.47 "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.48 "Hazardous Materials" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.49 **"Inexcusable Delay"** shall have the meaning set forth in Section 4.6.1.

1.50 **"Kansas City Construction Agreement"** means that certain Kansas City Construction Agreement between the [redacted] and the Design/Builder of even date herewith, as amended and modified from time to time.

1.51 **"Kansas City Construction Consultant"** shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.52 **"Kansas City Contractor"** means [redacted].

1.53 **"Kansas City Site"** means the property identified on Exhibit I-2 attached hereto.

1.54 **"Landscaping Work"** shall mean the landscaping provided for new replacement units and existing units as more fully described in Exhibit A.

1.55 **"Liquidated Damages"** shall have the meaning set forth in Section 4.6.4.

1.56 **"Managing Member"** means [redacted] which is the managing member of the Company.

1.57 **"Modification"** means an amendment to this Agreement executed by the Parties after the Effective Date.

1.58 **"Notice to Begin Design"** means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.59 **"Option"** shall have the meaning set forth in Section 2.1.

1.60 **"OSHA"** shall have the meaning set forth in Section 10.2.2 hereof.

1.61 "Overhead" means

1.62 "Party" or "Parties" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.63 "Payment and Performance Bonds" means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractors, as required under the Construction Agreements.

1.64 "Phase III Offer" shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.65 "Phase III RFP" shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.66 "Phases" means the construction phases of the Project described in Exhibit G, as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Construction Agreements are initially included as alternates under the Construction Agreements and will be incorporated into the Construction Agreements by Change Order prior to the commencement of each such Phase.

1.67 "Product Data" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.68 "Project" means the facilities located on the Sites, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.69 "Punch List" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.70 "Rehabilitation Work" shall mean the rehabilitation of existing residential units as more fully described in Exhibit A.

1.71 "Retainage" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.72 "Samples" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.74 "Schedule" means the schedule attached hereto as Exhibit H. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.75 "Scheduled Date of Substantial Completion" means those dates the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.76 "Scope of Work Submittal Documents" means the drawings, specifications and other documents prepared for the Design/Builder by the Architect (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Scope of Work Submittal Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.77 "Self-Performed Work" shall have the meaning set forth in Section 8.3 hereof.

1.78 "Separate Contractors" means those individuals or entities (other than the Team Subcontractors) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.79 "Shop Drawings" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.80 "Sites" means the [redacted] and the Kansas City Site (each of which may be referred to herein individually as a **"Site"**), as more fully described on Exhibit I-1 and Exhibit I-2 hereto, and any other real property on which the Work will be performed.

1.81 "Subcontract" means an agreement between any of the Contractors, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work.

1.82 "Subcontractor" means an individual or entity who has entered into an agreement with either the Architect, any of the Contractors or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.83 "Substantial Completion" or "Substantially Complete" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.84 **"Surety"** means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the applicable state where the Project is located.

1.85 **"Team Subcontract"** means an agreement between the Contractors or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement.

1.86 **"Team Subcontractors"** means the Contractors and the Architect.

1.87 **"Trustee"** shall have the meaning set forth in the Amended and Restated Operating Agreement.

1.88 **"Twentynine Palms Construction Agreement"** means that certain Twentynine Palms Construction Agreement between the Twentynine Palms Contractor and the Design/Builder of even date herewith, as amended and modified from time to time.

1.89 **"Twentynine Palms Construction Consultant"** shall have the meaning as set forth in the Amended and Restated Operating Agreement.

1.90 **"Twentynine Palms Contractor"** mean

1.91 **"Twentynine Palms Site"** means the property identified on Exhibit I-1 attached hereto.

1.92 **"United States Member"** means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.93 **"Work" or "Scope of Work"** means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work, Rehabilitation Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order

under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the date(s) of Substantial Completion set forth in the Schedule attached as Exhibit H, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder hereby assigns outright and exclusively to the Company all copyrights in the design appearance of the Project. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims from such for claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, **"Claims"**) (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a

result of amendments or modifications of any such Design Materials made without the prior written consent of Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Sites; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Project characterization reports listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Phase III RFP or Project characterization reports listed on Exhibit C, or known as of the Effective Date by the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A). Any other Hazardous Materials besides the ones specifically identified in this Section 2.4.2 are not included in the Scope of Work.

2.5 Scope of Work Submittal Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibits H and J hereto, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the durations and procedures set forth in Exhibits H and J hereto.

2.6 Legal Requirements.

2.6.1 Compliance; Notices; Permits. The Design/Builder shall:

2.6.1.1 Comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure

those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between local laws, codes, ordinances, rules, regulations and orders and this Agreement or the Contract Documents, the Design/Builder is required to comply with local laws, codes, ordinances, rules, regulations and orders, but the Design/Builder shall be entitled to a Change Order adjusting the Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultants and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company withir [redacted] Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Phase III Offer and the general intent of the Phase III RFP and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Renovation Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Rehabilitation Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase III Offer and the general intent of the Phase III RFP and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase III Offer and the general intent of the Phase III RFP and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion of such building or group of buildings. If within after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is

not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company t .

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Omitted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct it in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time, the Company may remove it and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1.

2.8.9 Acceptance of Work. If the Company prefers to accept Construction Work, Rehabilitation Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may instead of requiring its reperformance, If the parties cannot agree, such

matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Sites portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work [redacted] have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company [redacted].

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

[redacted]

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultants, the United States Member and their respective authorized designees access to the Sites at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Sites.

The Design/Builder shall prepare a Mobilization Plan, prior to the start of each phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company. The "**Mobilization Plan**" shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Sites to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Sites with materials or equipment. The Design/Builder shall at all times confine its access and use of the Sites to the areas designated by the Company from time to

time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Sites, or relevant portions thereof, at certain times, and to the extent that any or all of the Sites are not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in the GMP and/or Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Sites and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is an change in the type or cost of any of such permits or inspection occurring after execution of

this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 **"Shop Drawings"** are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, a Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 **"Product Data"** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 **"Samples"** are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals

of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultants, and the Resident Officer in Charge of Construction ("**ROICC**") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultants, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid as a Cost of the Work.

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Sites, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in

dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens withir Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching site utilities, materials, or other site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule the costs of such uncovering and replacement shall be a Cost of the Work.

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design/Builder shall pay such costs as a Cost of the Work, unless such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the

Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule and GMP in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate

Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be Cost of the Work. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work. If it is determined that the Design/Builder was not at fault, all costs of defense, including attorney's fees, shall be paid by the Company a

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental

costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architect's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such

deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion dates for each building. The dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Withi[redacted] Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for each Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such shall constitute an **"Excusable Delay"** (to the extent not set forth below, a delay will be considered an **"Inexcusable Delay"**).

4.6.1.1 Failure or inability of the Company to make available any or all of the Sites in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than [redacted] Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within [redacted] ays after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay withi [redacted] Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Company [redacted] P [redacted]

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the scheduled date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages in an amount [redacted]

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall

agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION:

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (to include the United States Member) have agreed upon the schedule of values shown in Exhibit E, which set forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All

estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the fifteenth (15th) Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than fifteen (15) Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within five (5) Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on each Phase shall be withheld until the Phase is complete; thereafter, no further Retainage will be withheld on that Phase. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, less of the value of any uncompleted Work or Punch list items relating to such building. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all

remaining Retainage shall be fully released within Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 Substantial Completion.

When the Design/Builder considers that a building is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Usee.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building or phase of the Project is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building or phase and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building or phase, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by

the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.14.4 The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 5.14.2 and 5.14.3 plus Fee on such difference in accordance with Section 6.5 if the actual costs are greater than the allowances.

5.15 Superintendent.

The Design/Builder shall cause the Contractors to employ a competent superintendent and necessary assistants who shall be in attendance at the respective Sites during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important

communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Sites for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in the First Mortgage Loan Documents. Notwithstanding the foregoing (1)reduction in the line item amount for Landscape Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted. .

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of [redacted] must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within [redacted] Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in th[redacted] the Schedule. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in t[redacted] Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. [redacted] When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedul[redacted] such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any

requested adjustment in Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3 he

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A, y

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Project is delayed beyond October 1, 2005 for any reason other than the fault of the Design/Builder,

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of each building, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Architect pursuant to which the Design/Builder shall delegate the design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into Team Subcontracts with each Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractors. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor (**"Self-Performed Work"**). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L, .

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work on either Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees, and shall be : Prior to the commencement of the Work on any alternate under either Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment Bond and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment Bond and Performance Bond. The Design/Builder shall require each Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in relevant Construction Agreement, as and when provided in the Construction Agreements. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees and shall be in the forms set forth on Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractors shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder. ;

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging

that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Sites under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Sites or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Section 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss

attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work [redacted].

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or any Site to be loaded so as to endanger their safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Sites and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure each Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Sites.

The Design/Builder shall be responsible for any and all damage to property at the Sites except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after [redacted] Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such [redacted] ay period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within [redacted] Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative [redacted] the [redacted].

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within [redacted] Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site(s) and any relevant documents. The mediator shall call a meeting of the

Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute; During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a **"Design/Builder Event of Default"**:

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after

Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated withi Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within sucl Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Sites and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of [redacted] ays pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Amended and Restated Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within [redacted] Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to t[redacted] Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreement Manager
Reference: Camp Pendleton & Quantico PPV

[redacted]

and

Naval Facilities Engineering Command
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374 5065
Attn: Special Venture Acquisition Department
Reference: Camp Pendleton & Quantico PPV

[redacted]

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in good faith to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Phase III Design/Builder's Consent Agreement dated as of even

date herewith executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

CAMP PENDLETON & QUANTICO HOUSING, LLC, a Delaware limited liability company

By: Hunt Lincoln Clark Family Communities LLC, a Delaware limited liability company, its Managing Member

[redacted]

[Signature Page to Phase III Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN BUILDER:

[Signature Page to Phase III Design/Build Agreement (Page 2 of 2)]

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Exhibit G	-	Project Phases
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Exhibit I-1	-	Twentynine Palms Site Description
Exhibit I-2	-	Kansas City Site Description
Exhibit J	-	Procedures for Review of Design Materials
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EXHIBIT A

SCOPE OF WORK

MAGTFTC TWENTYNINE PALMS, CA

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Attachments: New or Revised SOW Documents

TP-1. [Intentionally Omitted]
TP-2. Revised - 7 June 2005: Appendix F4: Recreational Appendices
TP-3. New - 30 Aug 2005: Picnic Renovation Matrix
TP-4. Revised – 7 June 2005: New and Renovation Pavement Scope Plans
TP-5. New – 30 Aug 2005: O-6 Floor Plan, Elevations and Site Layout
TP-6. New – 30 Aug 2005: E-9 Conversion Floor Plan, Elevations and Site plan
TP-7. New – 30 Aug 2005: Connecting Walkway from Riley House to GOQ
TP-8. Revised – 7 June 2005: Demolition Plan for Sunflower Terrace
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TP-10. New – 30 Aug 2005: Mail Box Shelter
TP-11. Revised 7 June 2005: Revised elevation treatment for Ocotillo Community Center
TP-12. New – 30 Aug 2005: Maintenance Building Plans
TP-13. New – 30 Aug 2005: Index of Drawings 7 June 2005 Scope of Work Submittal
TP-14. Revised– 31 Aug 2005: Project Scope Matrix
TP-15. New – 22 Sep 2005 Materials and Equipment List
TP-16. New – 20 Sep 2005: List of Applicable Codes

Documents included by Reference:

1. MAGTFTC, Twentynine Palms, California MOBCOM, Kansas City, Missouri
   Scope of Work Drawings – Part 1 of 2 Dated 7 June 2005
   (Add index to 7 June 2005 Drawings)

2. MAGTFTC, Twentynine Palms MOBCOM, Kansas City Scope of Work Appendices – Part 2 of 2 Dated 7 June 2005
   (Add index to 7 June 2005 SOW Appendices)

Exh. A

(Twentynine Palms)

[redacted]

TP-15-36

SCOPE OF WORK

MOBCOM, KANSAS CITY, MISSOURI

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KC-1. Index to Revised Scope of Work Drawings dated 30 Aug 2005 (Drawings Submitted separately on 30 Aug 2005)
KC-2. Development Phasing Site Plans - 4 sheets
KC-3. New Unit/Building/Elevation Matrix
KC-4. Material and Equipment List
KC-5. Recreation Matrix
KC-6. List of Codes

KC-2-3

Attachment KC-4

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

Environmental Baseline Survey for Military Family Housing, Marine Corps Air Ground Task Force Command (MAGTFTC) 29 Palms, California	May 19, 2005
Environmental Baseline Survey for Military Family Housing, Marine Corps Support Activity (MCSA) Kansas City, MO	February, 2005
General Decision Number CA030028, Mod-7 dated 08-Oct-04	October 8, 2004
General Decision Number MO030009 Mod-7 dated 29-Oct-04	October 29, 2004
Phase I Environmental Site Assessments – Final [redacted] (MOBCOM Kansas City and MAGTFTC Twentynine Palms)	August 09, 2005
Soils Report with Boring Logs	Final Report Pending
SWPPP Storm Water Pollution Prevention Plan .	September 9, 2005
Construction Plans and Specifications MAGTFTC 29 Palms and MOBCOM Kansas City	See Following Pages

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B. Financial Letters (See Original Submittal of 21 March 05)
C. Material and Equipment Lists
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D. Schedule Narrative and Back-up Data
1. Design / Construction / Schedule Narrative
2. Milestone Design Schedule Submittal and Approval Summary
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2. Kansas City - MOBCOM
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4. Recreation and Site Equipment Matrices
5. Landscape Quantities Matrix
G.
H. Response to Kick-off Questions
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2. Kick-off Response - Financial
I. Exhibit "A" - Scope of Work Narrative
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[redacted]

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[redacted]

Exh. C-4

EXHIBIT D

COST OF THE WORK

Exh. D-2

Exh. D-3

Exh. D-5

EXHIBIT E

Exh. E-1

Exh. E-2

Exh. E-3

Exh. E-4

EXHIBIT F

COMPANY GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible.

Department of the Navy:

Obtain written approval of all plans and specifications from the DoN. Plans and specifications will be submitted in accordance with Exhibit J of this Agreement. This shall include the design for the fire protection and sprinklers.

Utilities:

The Company is to provide all utility easements and services as may be required including, hut not limited to water, sewer, and telephone, power, gas, phone, data and CATV.

Group Approvals:

Currently there are no known required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from citizen groups, associations, etc.

Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals maybe required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the sites, such approvals shall be the responsibility of the Company.

EXHIBIT G

PROJECT PHASES

[redacted]

EXHIBIT H

EXHIBIT I-1

TWENTYNINE PALMS SITE DESCRIPTION

That certain land owned by the Company in Twentynine Palms, San Bernardino County, California and part of the Phase III CPQ Project (as defined in the Amended and Restated Operating Agreement), as more particularly identified and described in Exhibit A-5 to the Amended and Restated Operating Agreement, together with any improvements located thereon.

EXHIBIT I-2

KANSAS CITY SITE DESCRIPTION

That certain land owned by the Company in the City of Belton, Cass County, Missouri and part of the Phase III CPQ Project (as defined in the Amended and Restated Operating Agreement), as more particularly identified and described in Exhibit A-5 to the Amended and Restated Operating Agreement, together with any improvements located thereon.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval withi[redacted]ays of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within t[redacted]Day review time, then afte[redacted]Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work for both Twentynine Palms MAGTFTC and Kansas City MOBCOM:

Twentynine Palms MAGTFTC

a. Design Development:
100% design development documents, identified as "Scope of Work" documents dated 7 June 2005, were submitted for review and approval on 7 June 2005. These design package included Civil and Architectural documents and summary specifications with sufficient detail to demonstrate design intent and substantial conformance to Phase III RFP requirements, the original Phase III Offer documents and negotiated items and comments from the DoN. The Architectural Documents included 1/4 scale unit plans, 1/8 scale building plans and elevations, and an architectural site plan. The Civil documents included grading and improvement plans with preliminary road and utility profiles.

b. Progress Set:
A "Progress Set" of design plans and specifications was submitted on 22 July 2005. This included all architectural plans, elevations, some details, some MEP drawings, civil site plans and preliminary civil details developed to an approximate 35% stage. The intent of these submittal documents is mainly to demonstrate that there is substantive on-going progress being made on the development of the working design documents. No specific review action by the DoN is expected, though comments will be welcomed.

c. 50% Design Submittal:
The submittal of the design documents at the 50% development stage was made on 31 Aug 2005. These drawings will clearly depict the floor plans, elevation treatments, general detail sand better developed MEP design drawings. These design documents will be reviewed by the third party code compliance firm, TMAD Taylor & Gaines ("TMAD"), the DoN and Lincoln Property Company. Review comments will be expected per the time frames noted previously.

d. 100% Design Submittal:
The 100% design submittal will occur in two stages, the first on about 14 Dec 2005, and the second on 17 January 2006. The 100% design submittal will have the completed designs with all details, dimensions and notes fully developed and on the design documents. Design calculations will also be completed and included. The DoN and Lincoln Property Company will review these documents and provide review comments as noted previously in this Exhibit J.

e. Final Submittal:
After receipt of government, Lincoln Property Company and Design/Builder design review comments for the 100% design documents, the Architect/Engineer will review, respond and incorporate the comments as may be appropriate. The A&E will re-submit the revised design documents that reflect the corrections and changes and coordinate the back-check review with the government representative (TMAD) to assure and confirm that the review comments have been appropriately and satisfactorily completed. The Company will then give final approval of all Drawings and Specifications upon completion of the back-check documents. The Company will grant Notice to Proceeds at that time.

Kansas City MOBCOM

a. Design Development:

In June of 2005, the BRAC recommendations were published which included significant realignment of Kansas City - MOBCOM. As a result of the anticipated results of that recommended realignment, in late June, 2005, the DoN, Marines and HLC decided to make drastic changes the Project scope. The Scope of Work changed from the originally planned [redacted] unit renovation and [redacted] unit demolition scope to a revised Project Scope of Work of the demolition and replacement of [redacted] units, minor exterior repairs to the remaining units, divestiture of [redacted] units at the end of the IDP and the anticipated divestiture of the remaining [redacted] units at a later date. On 30 Aug 2005, new Design Development documents titled "Revised Scope of Work" were submitted for the Kansas City MOBCOM housing. These design packages reflect site, housing and community amenity features that had been developed in conjunction with the DoN and Marines. They include a Demolition Plan, New Site Plan with Unit Mix Matrix, twelve new Floor Plans at ¼ scale, twelve new Building Elevations at 1/8 scale, and Floor Plan and Building Elevation of the new Community Center. Material & Equipment Lists are included for the Site Development, New Housing and Community Center.

b. Progress Set:
A "Progress Set" of design plans and specifications will be submitted on 11 October 2005. This will include further development of all architectural plans, elevations, some details, some MEP drawings, civil site plans and preliminary civil details developed to an approximate 35% stage. The intent of these submittal documents is mainly to demonstrate that there is substantive on-going progress being made on the development of the working design documents. No specific review action by the DoN is expected, though comments will be welcomed.

c. 50% Design Submittal:
The submittal of the design documents at the 50% development stage will be made on 7 December 2005. These drawings and documents will have further development of the civil and utilities, clearly depict the floor plans, elevation treatments, general details, initial structural design, and better-developed MEP design drawings. These design documents will be reviewed by the third party scope compliance firm, TMAD, the DoN, the Base and Lincoln Property Company. Review comments will be expected per the time frames noted previously.

d. 100% Project Design Submittal:
The 100% project design submittal will occur on 21 February 2006. This submittal is for the review by the third party scope compliance firm (TMAD), the DoN, the Base and Lincoln Property Company. It will have the completed designs with all details, dimensions and notes fully developed and on the design documents. Design calculations will also be completed and included. TMAD will review these to assure that they are

consistent with the required scope, but will not be doing a code compliance review. The DoN, the Base and Lincoln Property Company will review these documents for function and quality issues and provide review comments as noted previously in this Exhibit J.

e. 100% City of Belton Submittal:
After receipt of DoN, the Base, Lincoln Property Company and Design/Builder design review comments for the 100% project design documents, the Architect/Engineer will review, respond and incorporate the comments. The A&E will re-submit the revised design documents that reflect the corrections and changes and coordinate the back-check review with the DoN, Base, Lincoln and Design/Builder reviewers. When complete, the A&E will submit the design documents to the City of Belton Building Department for their review. When the City of Belton comments are available, the A&E, in conjunction with the Design/Builder, will resolve all comments and re-submit the design documents for final back-check and approval by the City of Belton. When the design documents are satisfactory to the City of Belton, then the City of Belton will issue the appropriate building permits.

The submittal process described above is based on the civil and architectural design submittals being submitted together. Design/Builder reserves the right to submit the civil and architectural design packages separately if it is more advantageous to Design/Builder or the City of Belton. The design schedule dates will continue to be adjusted to better reflect the specific submittal processes required by the City of Belton and to assure that the all design work is completed and approved so the scheduled demolition, civil work and new buildings are started on schedule.

5. The Design/Builder shall provide a submittal register detailing the items to be submitted by the Design/Builder to the Company for approval within [redacted] The Company shall review and approve this list withi[redacted] Days from receipt of the register. The Design/Builder will then provide submittals for review and approval in accordance with the register. The Company shall approve individual submittals submitted by the Design/Builder withi[redacted] Days of receipt.

6. Notwithstanding the foregoing, if the Design/Builder and/or a Design Subcontractor determine that the Company's approval of a specific component, item, or system is required to continue the Design Work in accordance with the Schedule, and such approval is not described above, the Company shall give its approval in accordance with paragraph 2 above.

[See Schedule Summary On Following Page]

Milestone Design Schedule Submittal and Approval Summary
Twentynine Palms and Kansas City PPV

EXHIBIT K

AUTHORIZED REPRESENTATIVES

Exh. K-2

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of '[redacted]'. Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of California or Missouri (as appropriate to the Site) where the project is located and elsewhere as may be required. Coverage shall include:

[redacted]

2. Commercial General Liability Coverage: Coverage to include the following extensions;

[redacted]

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

7. The Design/Builder will endorse the Commercial General Liability and Umbrella Policies to include the Company and Department of Navy as Additional Insured's using Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the Department of Navy.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability Insurance, if desired. Optionally, the Company may purchase and maintain other insurance for Self-protection against claims which may arise from operations under the Contract. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

Exh. M-2

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[See Attached]

CO-OBLIGEE RIDER

CO-OBLIGEE RIDER

EXHIBIT N-2

FORM OF SUBCONTRACTOR BONDS

CO-OBLIGEE RIDER

KC-2-4

G-4-325

EXHIBIT O

Exh. O-3

EXHIBIT P

DAVIS BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to as **"Contractor"** or **"Prime Contractor"**) shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision (attached hereto as Appendix P-1), and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

[See Attached]

APPENDIX P-1
DAVIS-BACON WAGE DETERMINATION

Appendix 6A contains Davis-Bacon Wage Determination as of 10/08/2004 for **Twentynine Palms**, California. It is the offerors responsibility to obtain and incorporate updated information at http://www.wdol.gov/. Updated information will be provided by the DoN upon request.

General Decision Number: CA030028 10/08/2004 CA28

Superseded General Decision Number: CA020028

State: California

Construction Types: Residential

Counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties in California.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	06/13/2003
1	02/13/2004
2	03/19/2004
3	04/02/2004
4	05/21/2004
5	07/16/2004
6	08/27/2004
7	10/08/2004

BRCA0004-001 05/01/2003

	Rates	Fringes
Bricklayer; Marble Setter		
Los Angeles County.....	$ 31.05	6.85

Orange County.....$ 29.96 5.90
Riverside & San Bernardino
Counties:.....$ 29.17 6.45
Ventura County.....$ 28.49 6.60

BRCA0004-004 05/01/2003

IMPERIAL

Rates Fringes

Bricklayer; Marble Setter.....$ 31.00 6.60

BRCA0004-009 05/01/2003

SAN LUIS OBISPO AND SANTA BARBARA COUNATIES

Rates Fringes

Bricklayer; Marble Setter.....$ 29.65 6.10

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* BRCA0018-001 09/01/2004

LOS ANGELES, ORANGE, RIVERSIDE, SANTA BARBARA, SAN LUIS OBISPO, SAN BERNARDINO & VENTURA COUNTIES

Rates Fringes

Marble Finisher
Los Angeles, Orange,
Riverside, Santa Barbara,
San Luis Obispo & San
Bernardino.....$ 20.70 5.81
Tile Finisher
Los Angeles, Orange,
Riverside, Santa Barbara,
San Luis Obispo & San
Bernardino.....$ 17.25 4.16

Tile Layer
Los Angeles, Orange,
Riverside, San Bernardino
& Ventura.....$ 27.50 9.37

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* BRCA0018-002 09/01/2004

SAN LUIS OBISPO AND SANTA BARBARA

	Rates	Fringes
Tile Layer	$ 26.27	6.71

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* BRCA0018-003 09/01/2004

IMPERIAL

	Rates	Fringes
Marble Finisher	$ 20.70	5.81
Tile Finisher	$ 17.25	4.16
Tile Layer	$ 27.50	9.37

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* BRCA0018-010 09/01/2004

	Rates	Fringes
Terrazzo Finisher	$ 21.89	7.76
Terrazzo Worker	$ 29.13	7.76

CARP0409-003 07/01/2003

	Rates	Fringes
Drywall		
(1) Work on Wood-Framed Single Family Homes, and Wood-Framed Apartment		

Buildings up to and
including 4 Stories
Installer.....$ 19.00 6.33
Stocker/Scrapper.....$ 10.00 5.27
(2) All other Work
Installer.....$ 29.80 7.38
Stocker/Scrapper.....$ 10.00 5.27

CARP0409-004 07/01/2002

Work on wood frame single family homes and apartments up to and including 4 stories:

	Rates	Fringes
Carpenter		
Cabinet installer	$ 18.09	5.34
Fence builder	$ 18.15	5.34
Framer & finish carpenter	$ 18.79	5.34
Insulation installer	$ 16.45	5.34
Roof loader of shingles	$ 11.49	5.34
Shingler	$ 16.42	5.34
Subterranean garage concrete construction and carpenter's performing on grade slab concrete construction	$ 20.17	5.34

CARP0409-009 07/01/2003

	Rates	Fringes
Modular Furniture Installer		
Full Wall Technician	$ 20.47	5.80
Mobile Filing System Installer	$ 13.76	5.80
Modular Installer	$ 14.36	5.80

ELEC0011-003 07/01/2001

LOS ANGELES

	Rates	Fringes
Electrician (does not include fire alarm, hold-up alarm, burglar alarm and surveillance systems).....	$ 16.15	3% + 4.51

ELEC0011-008 12/01/2001

COMMUNICATIONS AND SYSTEMS WORK: (does not include any work on intelligent transportation systems or CCTV highway systems)

LOS ANGELES

	Rates	Fringes
Communications & Systems Technician.....	$ 23.33	3%+5.00
Communications and Systems Installer.....	$ 21.53	3%+5.00

SCOPE OF WORK

The work covered shall include the installation, testing, service and maintenance, of the following systems that utilize the transmission and/or transference of voice, sound, vision and digital for commercial, education, security and entertainment purposes for TV monitoring and surveillance, background foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call system, radio page, school intercom and sound, burglar alarms and low voltage master clock systems.

A. Communication systems that transmit or receive information

and/or control systems that are intrinsic to the above
listed systems SCADA (Supervisory control/data acquisition
PCM (Pulse code modulation)
Inventory control systems
Digital data systems
Broadband & baseband and carriers
Point of sale systems
VSAT data systems
Data communication systems
RF and remote control systems
Fiber optic data systems

B. Sound and Voice Transmission/Transference Systems
Background-Foreground Music
Intercom and Telephone Interconnect Systems
Sound and Musical Entertainment Systems
Nurse Call Systems
Radio Page Systems
School Intercom and Sound Systems
Burglar Alarm Systems
Low-Voltage Master Clock Systems
Multi-Media/Multiplex Systems
Telephone Systems
RF Systems and Antennas and Wave Guide

C. *Fire Alarm Systems-installation, wire pulling and testing.

D. Television and Video Systems
Television Monitoring and Surveillance Systems
Video Security Systems
Video Entertainment Systems
Video Educational Systems
CATV and CCTV

E. Security Systems
Perimeter Security Systems
Vibration Sensor Systems

Sonar/Infrared Monitoring Equipment
Access Control Systems
Card Access Systems

Fire Alarm Systems
1. Fire Alarms-In Raceways
a. Wire and cable pulling, in raceways, performed at the current electrician wage rate and fringe benefits.
b. Installation and termination of devices, panels, startup, testing and programmming performed by the technician.

2. Fire Alarms-Open Wire Systems
a. Open wire systems installed by the technician.

ELEC0011-009 12/01/2001

COMMUNICATIONS AND SYSTEMS WORK
RIVERSIDE, SAN LUIS OBISPO, AND SANTA BARBARA

	Rates	Fringes
Communications & Systems Technician	$ 23.93	3% + 4.40
Communications and Systems Installer	$ 22.13	3% + 4.40

SCOPE OF WORK:
Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, microwave transmission, multi-media, multiplex, nurse call systems, radio page, burglar alarms and fire alarm (see last paragraph below).

Communication Systems that transmit or receive information

and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data,systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems.

Fire alarm work shall be performed at the current inside electrician total cost package.

ELEC0011-010 12/01/2001

COMMUNICATIONS AND SYSTEMS WORK:

RANGE

	Rates	Fringes
Technician		
COMMUNICATIONS AND SYSTEMS WORK		
Alarm technician (duties limited to pulling wire to and terminating devices; not to install devices that interface with other contractors (mounting waterflow, duct detectors, dampers or connecting control panels).	$ 13.93	3% + 3.40
Installer	$ 22.13	3% + 4.40
Technician	$ 23.93	3% + 4.40

SCOPE OF WORK:

Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational,

security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, microwave transmission, multi-media, multiplex, nurse call systems, radio page, burglar alarms and fire alarm (see last paragraph below).

Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems.

ELEC0011-011 09/01/1998

LOS ANGELES

	Rates	Fringes
Technician		
ALARM TECHNICIAN.....	$ 17.60	3%

PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, the last regularly scheduled working day before Christmas, Christmas Day, and two floating holidays by mutual agreement between the employer and the worker.

SCOPE OF WORK: Fire alarm, hold-up alarm, burglar alarm and surveillance systems. Does not cover the installation of conduit systems and/or the installation of line voltage to these aforesaid systems. Installation of an incidental run or runs of conduit for mechanical protection shall not be considered a conduit system.

ELEC0011-014 02/14/2000

COMMUNICATIONS AND SYSTEMS WORK:
SAN BERNARDINO AND VENTURA COUNTIES

	Rates	Fringes
Communications & Systems Technician	$ 22.03	3% + 4.00
Communications and Systems Installer	$ 20.23	3% + 4.00

SCOPE OF WORK:

Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, microwave transmission, multi-media, multiplex, nurse call systems, radio page, burglar alarms and fire alarm (see last paragraph below).

Communication systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems.

Does not cover work performed at China Lake Naval Ordnance Test Station.

Fire alarm work shall be performed at the current inside electrician total cost package.

ELEC0413-002 05/01/2004

SANTA BARBARA COUNTY

	Rates	Fringes
Electricians	$ 17.61	3%+8.35

WORK AT VANDENBERG AFB: $3.75 additional per hour.

ELEC0440-002 12/01/2001

RIVERSIDE

	Rates	Fringes
Electrician	$ 17.00	3%+5.66

ELEC0441-002 06/23/2002

ORANGE

	Rates	Fringes
Electrician	$ 20.00	3%+3.90

ELEC0477-003 05/31/2004

SAN BERNARDINO

	Rates	Fringes
Electrician		
All single family dwellings and multi-family dwellings not exceeding eight units and/or two stories	$ 16.00	3%+4.95

All other work.....$ 19.15 3%+13.00

CABLE SPLICER: $1.00 above Electrician

ELEC0569-003 06/01/2001

IMPERIAL

	Rates	Fringes
Cable splicer		
Electrical subcontracts of$500,000 or less.....	$ 24.96	3%+6.47
Electrical subcontracts over $500,000.....	$ 27.96	3%+6.47
Electrician		
Work on single family homes, duplexes, condominiums and apartments that do not exceed 3 stories.....	$ 14.61	3%+2.77
All other residenial construction		
Electrical subcontracts of $500,000 or less.....	$ 24.21	3%+6.47
Electrical subcontracts over $500,000.....	$ 27.21	3%+6.47

Work on single family homes, duplexes, condominiums and apartments that do not exceed three (3) stories

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* ELEC0639-002 12/01/2003

SAN LUIS OBISPO

	Rates	Fringes
Electrician.....	$ 15.85	3%+7.95

FOOTNOTES: Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance of fifty (50) feet to ninety (90) feet: to be paid time and one-half.

Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance over ninety (90) feet: to be paid double the regular straight time rate of pay.

ELEC0952-002 10/01/2002

VENTURA

	Rates	Fringes
Cable splicer		
All work more than 32 road miles from the nearest base point	$ 39.86	3%+9.80
All work within 32 road miles or less from the nearest base point	$ 34.86	3%+9.80
Electrician		
All work more than 32 road miles from the nearest base point	$ 36.60	3%+9.80
All work within 32 road miles or less from the nearest base point	$ 31.60	3%+9.80

FOOTNOTE: Base points: the main Post Office in the cities of Camarillo, Oak View, Oxnard, Santa Paula and Ventura.

ELEV0008-004 08/01/2000

SAN LUIS OBISPO

	Rates	Fringes
Elevator Mechanic	$ 41.845	7.195

FOOTNOTE: Vacation Pay: 8% with 5 or more years of service, 6% for 6 months to 5 years service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

ELEV0018-004 09/15/1999

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Elevator Mechanic	$ 31.915	6.985

FOOTNOTE: Employer contributes 8% basic hourly rate for over 5 years service and 6% basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day.

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* ENGI0012-001 07/01/2004

	Rates	Fringes
Power equipment operator - cranes, piledriving, hoisting		
GROUP 1	$ 29.95	14.55
GROUP 2	$ 30.73	14.55
GROUP 3	$ 31.02	14.55
GROUP 4	$ 31.16	14.55
GROUP 5	$ 31.38	14.55

GROUP 6	$ 31.49	14.55
GROUP 7	$ 31.61	14.55
GROUP 8	$ 31.78	14.55
GROUP 9	$ 31.95	14.55
GROUP 10	$ 32.95	14.55
GROUP 11	$ 33.95	14.55
GROUP 12	$ 34.95	14.55
GROUP 13	$ 35.95	14.55
Power Equipment Operator		
GROUP 1	$ 28.60	14.55
GROUP 2	$ 29.38	14.55
GROUP 3	$ 29.67	14.55
GROUP 4	$ 31.16	14.55
GROUP 5	$ 32.26	14.55
GROUP 6	$ 31.38	14.55
GROUP 7	$ 32.48	14.55
GROUP 8	$ 31.49	14.55
GROUP 9	$ 32.59	14.55
GROUP 10	$ 31.61	14.55
GROUP 11	$ 32.71	14.55
GROUP 12	$ 31.78	14.55
GROUP 13	$ 31.88	14.55
GROUP 14	$ 31.91	14.55
GROUP 15	$ 31.99	14.55
GROUP 16	$ 32.11	14.55
GROUP 17	$ 32.28	14.55
GROUP 18	$ 32.38	14.55
GROUP 19	$ 32.49	14.55
GROUP 20	$ 32.61	14.55
GROUP 21	$ 32.78	14.55
GROUP 22	$ 32.88	14.55
GROUP 23	$ 32.99	14.55
GROUP 24	$ 33.11	14.55
GROUP 25	$ 33.28	14.55

FOOTNOTES: Work at Point Arguello and Vandenburg Air Force Base: $3.75 per hour additional. Workers required to suit up and work in a hazardous materialenvironment: $2.00 per

hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine oeprator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (side steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30" maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine;

Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator (including water wells); Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo ballistic regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or

similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar

with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar, and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator,

operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist

operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up

to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

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* IRON0002-001 07/01/2004

	Rates	Fringes
Ironworker		
Fence Erector	$ 27.02	14.74
Ornamental, Reinforcing and Structural	$ 27.91	14.74

PREMIUM PAY:

$3.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$2.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base,

Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$1.00 additional per hour at the following locations:
Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0300-002 07/01/2004

	Rates	Fringes
Brick Tender	$ 21.60	11.72

LABO0300-004 07/01/2004

Residential, 4 Stories

	Rates	Fringes
Laborer		
GROUP 1	$ 20.60	12.13
GROUP 2	$ 21.15	12.13
GROUP 3	$ 21.70	12.13
GROUP 4	$ 23.25	12.13
GROUP 5	$ 23.60	12.13

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, timber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee

bolt holes; Dry packing of concrete and patching; post hole digger (manual);Railroad maintenance, repair track person and road beds;Streetcar and railroad construction track laborers; Rigging andsignaling; Scaler; Slip form raiser; Slurry seal crew (mixer operator, applicator operator, squeegee person, shuttle person, top person), filling of cracks by any method on any surface; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asbestos abatement; Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curb, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer (lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person,

pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; operation of remote controlled robotic tools in connection with Laborer's work; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Power post hole digger; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Any worker exposed to raw sewage; Asphalt raker, lute person, ironer, asphalt dump person and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt-rubber distributor boot person; Laser beam in connection with laborers' work; Over-size concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in theditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic,conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting,Porta Shot-Blast; Traffic

lane closure, Certified.

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all types of mechanical drills without regard to the form of motive power; Toxic waste removal; Boring system electronic tracking locator

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LABO0300-006 08/04/2004

	Rates	Fringes
Laborer		
Plaster Clean-Up Laborer		
Four Stories	$ 20.74	12.11
Three Stories or less	$ 18.74	12.11
Plaster Tender		
Four Stories	$ 23.29	12.11
Three Stories or less	$ 21.29	12.11
Work on single family homes and apartment and condominimus that do not exceed 3 stories in height		
PLASTER CLEANUP LABORER	$ 18.45	10.17
PLASTER TENDER	$ 21.00	10.17
All other residential construction		
PLASTER CLEANUP LABORER	$ 20.24	10.17
PLASTER TENDER	$ 23.00	10.17

Work at Military Bases - $3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, George AFB, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval

Air Facility-Seeley, North Island Naval Air Station,
Vandenberg AFB.

LABO0300-007 07/01/2004

Residential, 3 Stories and under

	Rates	Fringes
Laborers		
(1) Cleanup, Fencing (Chain Link or Wood), Landscaping	$ 19.07	8.67
(2) All Other Work	$ 20.07	8.67

LABO0882-003 01/01/2004

	Rates	Fringes
Asbestos Removal Laborer	$ 22.00	9.20

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos containing material and toxic waste (including lead abatement and any other toxic material), encapsulation, enclosure and disposal of asbestos containing materials and toxic waste(including lead abatement and any other toxic materials) by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2004

	Rates	Fringes
Laborers:		
STRIPING/SLURRY SEAL GROUP 1	$ 22.16	10.39

GROUP 2	$ 23.41	10.39
GROUP 3	$ 25.34	10.39
GROUP 4	$ 27.01	10.39

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

PAIN0036-005 01/01/2004

	Rates	Fringes
Painter (including lead abatement)		
Imperial, Los Angeles, Orange, Riverside & San Bernardino	$ 18.90	4.25
San Luis Obispo, Santa Barbara & Ventura	$ 17.70	4.25

PAIN0036-011 01/01/2004

	Rates	Fringes
Drywall Finisher		
IMPERIAL COUNTY; LOS ANGELES COUNTY (excluding Antelope Valley north of the following boundary: Kern County line to Hwy. #5, south on Hwy. #5 to Hwy. N2, east on Hwy. N2 to Palmdale Blvd., to Hwy. #14, south to Hwy. #18, east to Hwy. #395); ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA COUNTIES RESIDENTIAL CONSTRUCTION: Applies to work performed on exterior and interior wood frame apartments, single family homes and multi-duplexes up to and including four stories	$ 18.00	5.01

All other residential work.$ 26.83 9.23

LOS ANGELES COUNTY
(Remainder of County)
Applies to work performed
on exterior and interior
wood framing apartments,
single family homes and
multi-duplexes up to and
including four stories.....$ 18.00 5.01
All other residential
construction.....$ 23.59 9.23

PAIN0036-014 01/01/2003

IMPERIAL

	Rates	Fringes
Glassworker.....	$ 16.16	4.05
Glazier.....	$ 27.35	8.69

PAIN0036-018 06/01/2004

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Glazier.....	$ 30.20	10.55

FOOTNOTE: Additional $1.25 per hour for work in a condo, from the third (3rd) floor and up. Additional $1.25 per hour for work on the outside of the building from a swing state or any suspended contrivance, from the ground up.

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* PAIN0036-020 07/01/2003

IMPERIAL

	Rates	Fringes
Soft Floor Layer.....	$ 20.32	6.65

* PAIN0169-007 07/01/2004

SAN LUIS OBISPO

	Rates	Fringes
Glazier.....	$ 26.68	10.44

* PAIN1247-003 01/01/2004

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Soft Floor Layer.....	$ 27.45	6.80

PLAS0200-002 08/06/1997

IMPERIAL, SAN LUIS OBISPO, AND SANTA BARBARA

	Rates	Fringes
Plasterer		
Work on 4-story apartment buildings.....	$ 23.38	4.04
Work on single family homes and apartments up to and including 3 stories.....	$ 20.38	4.04

PLAS0200-003 08/07/2002

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, AND VENTURA

	Rates	Fringes
Plasterer		
Work on wood, metal, masonry or frame construction of single family residences apartments and apartment condominiums up to and including three stories.....	$ 23.77	6.76
All other residential work..	$ 26.77	6.76

* PLAS0500-003 07/01/2004

	Rates	Fringes
Cement Mason		
(1) Work on wood or metal frame construction of single family residences, apartments and condominiums (does not include projects that exceed 3 stories; any utility work; such as telephone, gas, water, sewer and other utilities; or any work outside property lines, including curbs, gutters and sidewalks).....	$ 18.74	4.16
(2) All other work.....	$ 24.20	14.59

* PLUM0016-011 07/01/2004

	Rates	Fringes

Plumber/Pipefitter
Residential.....$ 25.32 8.84

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* PLUM0250-001 09/01/2004

LOS ANGELES AND ORANGE

	Rates	Fringes
Refrigeration Mechanic /Refrigeration Fitter.....	$ 34.20	11.80

ROOF0036-001 10/01/2002

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Roofer		
PREPARER Duties limited to the following: Roof removal of any type of roofing or roofing material; or spudding, or sweeping; and/or clean-up; and/or preload in, or in preparing the roof for application of roofing, damp and/or waterproofing material.....	$ 16.24	1.00
ROOFERS.....	$ 21.31	4.35

FOOTNOTE: Pitch premium: Work on which employees are exposed to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive $1.75 per

hour "pitch premium" pay.

---

* ROOF0045-003 01/01/2004

IMPERIAL

	Rates	Fringes
Roofer	$ 21.95	4.13

SFCA0669-005 01/01/2004

	Rates	Fringes
Sprinkler Fitter IMPERIAL COUNTY; LOS ANGELES COUNTY (does not include the city of Pomona, Catalina Island, and that part of Los Angeles County within 25 miles of the city limits of Los Angeles); ORANGE COUNTY (does not include Catalina Island; San Clemente Island; City of Santa Ana; and remainder of Orange County within 25 miles of the city limits of Los Angeles); RIVERSIDE COUNTY; AND SAN BERNARDINO COUNTY (does not include the northern part of City of Chino, or the cities of Montclair and Ontario) Work on one or two family dwellings; all multiple family dwelling units		

which are permitted to have a single exterior up to and including 4 stories; townhouses with units stacked vertically up to and including 4 stories; and group residential care facilities and protective care homes (sheltered housing), not to include nursing homes or ambulatory care facilities.	$ 20.06	1.79
All other residential work.	$ 26.75	10.95
SAN LUIS OBISPO AND SANTA BARBARA COUNTIES; AND VENTURA COUNTY (does not include Port Hueneme, Port Mugu, the city of Santa Paula, and that part of Ventura County within 25 miles of the city limits of Los Angeles)		
Work on one or two family dwellings; all multiple family dwelling units which are permitted to have a single exterior up to and including 4 stories; townhouses with units stacked vertically up to and including 4 stories; and group residential care facilities and protective care homes (sheltered housing), not to include nursing homes or		

ambulatory care facilities..	$ 20.51	1.79
All other residential work.	$ 27.35	10.95

SFCA0709-002 04/01/2004

LOS ANGELES COUNTY (the city of Pomona, Catalina Island, and that part of Los Angeles County within 25 miles of the city limits of Los Angeles); ORANGE COUNTY (San Clemente Island, the city of Santa Ana, and that part of Orange County within 25 miles of the city limits of Los Angeles); SAN BERNARDINO COUNTY (the northern part of the city of Chino, and the cities of Montclair and Ontario); VENTURA COUNTY (Port Hueneme, Port Mugu, the city of Santa Paula, and that part of Ventura County within 25 miles of the city limits of Los Angeles)

	Rates	Fringes
Sprinkler Fitter		
Work on single family homes, including new or existing mobile homes, duplex, triplex residences, garden type apartments not exceeding four (4) stories in height, including service, utility, storage, garage and support units built in conjunction with residential units.....	$ 21.60	7.90
All Other Work.....	$ 31.23	14.10

SHEE0105-001 08/01/2004

AREA 1: LOS ANGELES COUNTY (South of a straight line drawn between gorman and Big Pines, excluding the area South of Imperial Highway East of the Los Angeles River, excluding the cities of Long Beach, Claremont, and Pomona, excluding Catalina

Island)

AREA 2: LOS ANGELES (Remainder), ORANGE, RIVERSIDE & SAN BERNARDINO COUNTIES

Work on general sheet metal and heating and air conditioning on single family dwellings, multiple family dwellings, track homes and apartment buildings individually conditioned by separate and independent units or systems

	Rates	Fringes
Sheet metal worker		
AREA 1	$ 18.84	5.03
AREA 2	$ 24.84	12.60

SHEE0206-003 01/01/2004

IMPERIAL

	Rates	Fringes
Sheet metal worker	$ 26.15	12.36

SHEE0273-001 08/01/2004

SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Sheet metal worker	$ 29.24	12.95

TEAM0011-001 07/01/2003

	Rates	Fringes
Truck drivers:		
GROUP 1	$ 22.34	12.84

GROUP 2	$ 22.49	12.84
GROUP 3	$ 22.62	12.84
GROUP 4	$ 22.81	12.84
GROUP 5	$ 22.75	12.84
GROUP 6	$ 22.87	12.84
GROUP 7	$ 23.12	12.84
GROUP 8	$ 23.37	12.84
GROUP 9	$ 23.57	12.84
GROUP 10	$ 23.87	12.84
GROUP 11	$ 24.37	12.84

WORK ON ALL MILITARY BASES: $3.00 PER HOUR ADDITIONAL

IMPERIAL COUNTY (El Centro); LOS ANGELES COUNTY (Edwards AFB); AND SAN BERNARDINO COUNTY (Edwards AFB, Fort Irwin, George AFB, Marine Corps Logistic Base at Nebo & Yermo, Twenty-Nine Palms Base)

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person ($0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work;

Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - $1.25 additional when operating winch or similar special attachments!

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations

indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

DAVIS-BACON WAGE DETERMINATION

Appendix 6B contains Davis-Bacon Wage Determination as of 09/03/2004 that applies to the housing area at **MOBCOM Kansas City**, located within Cass County, Missouri. It is the offerors responsibility to obtain and incorporate updated information at http://www.wdol.gov/. Updated information will be provided by the DoN upon request.

General Decision Number: MO030009 10/29/2004

General Decision Number: MO030009 10/29/2004
Superseded General Decision Number: MO020009
State: Missouri
Construction Types: Residential
Counties: Cass, Clay, Jackson, Platte and Ray Counties in Missouri.
RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	06/13/2003
1	04/02/2004
2	04/23/2004
3	05/14/2004
4	06/04/2004
5	07/23/2004
6	09/03/2004
7	10/29/2004

* ASBE0027-002 10/04/2004

	Rates	Fringes
Asbestos Workers/Insulator Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems. Also the application of firestopping material for wall openings and penetrations in walls, floors, ceilings and curtain walls	$ 27.64	16.73+10%

BOIL0083-005 01/01/2004

	Rates	Fringes
Boilermaker	$ 27.40	15.36

BRMO0015-002 04/01/2004

	Rates	Fringes
Bricklayer	$ 27.55	9.95

CARP0007-007 04/01/2001

	Rates	Fringes
Carpenter	$ 19.15	5.78

ELEC0124-001 08/27/2001

	Rates	Fringes
Electrician	$ 15.00	5.15

ELEV0012-001 07/03/2002

	Rates	Fringes
Elevator Mechanic	$ 28.285	7.455+a

a. VACATION: Employer contributes 8% of basic hourly rate to vacation pay credit for employee who has worked in business more than 5 years and 6% for 6 months to 5 years as Vacation Pay Credit.

PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day and Christmas Day.

ENGI0101-014 04/01/2004

	Rates	Fringes
Power equipment operators:		
GROUP 1	$ 27.31	9.05
GROUP 2	$ 26.50	9.05
GROUP 3		
(a)	$ 21.35	9.05
(b)	$ 22.15	9.05
(c)	$ 25.16	9.05
(d)	$ 22.55	9.05
GROUP 4	$ 29.16	9.05
GROUP 5	$ 28.66	9.05
GROUP 6	$ 29.91	9.05

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Cranes 150 ft. or less of Boom; Overhead Cranes; Hydraulic Cranes; Cherry Picker; Pile Drivers; Derrick and Derrick Cars (Power Operated); Clamshells; Concrete Mixer Paver; Grade-all-similar type; Hoist Operator; (Drum and Cable type)

GROUP 2: Asphalt Paver and Spreader; Asphalt Plant Mixer Operators; Asphalt Plant Operator; Back Hoe (all types); Barber- Green loader (similar type); Blade-power (all types); Boats- Power; Bobcat or Skid-Loader; Boring Machine; Brooms-Power operated (all types); Chip Spreader (Front man); Concrete Pump (with tower, $0.50 per hour additional); Concrete Saws, Self- Propelled; Curb Finishing Machine, Ditching Machine; Dozers; Finishing Machine; Greaser; Hoist Operator (Personnel or Material Hoist); Hydra Hammer (all types); Loaders (all types);Locomotives (all types); Mechanic and Welder; Mucking Machine; Pumps-Material (all types); Rollers (all types); Self-propelled Rotary Drill; Shovel, Power; Side Boom; Testhole Machine;

GROUP 3: (a) Oilers (b) Oiler driver; (c) forklifts (d) Elevator Operator (Automatic or Push Button) A-frame trucks; mixers (with side loaders); pumps (with well points), dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

GROUP 4: Master Mechanic

GROUP 5: Crane (Tower or Climbing); Other cranes with over 150 ft. of boom (including jib).
GROUP 6: Cranes over 225' including jib.
HOURLY PREMIUMS:
Clamshells, 100 ft. of boom or over (excluding jib) ($0.25)
Draglines, 100 ft. of boom or over ($0.25)
Hoists, each additional drum over 1 drum ($0.25)
Pile Drivers, 100 ft. of boom or over (excluding jib) ($0.25)

IRON0010-010 04/01/2003

	Rates	Fringes
Ironworker	$ 24.10	13.73

LABO0264-004 04/01/1997

	Rates	Fringes
Laborer	$ 12.05	2.60

PAIN0003-003 04/01/2000

	Rates	Fringes
Painters:		
Bazooka	$ 22.60	6.01
Brush, Roller, Tapers	$ 22.10	6.01
Lead Abatement	$ 23.10	6.01
Spray	$ 23.10	6.01

PAIN0558-008 10/01/2002
All of Cass, Clay, Jackson and Platte Counties and ONLY East of Highway 13 in Ray County

	Rates	Fringes
Glazier	$ 22.85	13.10

PAIN0558-010 05/01/2003
West of Highway 13 in Ray County

	Rates	Fringes
Glazier	$ 23.35	8.22

PAIN0820-001 06/01/1999

	Rates	Fringes
Painters:		
Sign	$ 17.70	4.30+a

VACATION:
a. Employed for 1 year but less than 2 years shall receive 1 week vacation with pay; 2 years or more shall receive 2 weeks vacation with pay; 10 years or more shall receive 3 weeks vacation with pay.

PAIN1179-003 01/01/2003

	Rates	Fringes
Soft Floor Layer	$ 23.90	7.75

PLAS0518-009 05/01/2001

	Rates	Fringes
Cement Mason	$ 23.13	7.15

PLAS0518-010 04/01/2002

	Rates	Fringes
Plasterer	$ 25.05	5.85

PLUM0008-007 06/01/2002

	Rates	Fringes
Plumber		
Cass, Clay, Jackson and Platte Counties	$ 28.44	11.61
Ray County	$ 26.00	11.61

PLUM0533-001 06/01/2004

	Rates	Fringes
Pipefitter	$ 31.73	13.73

ROOF0020-005 06/01/2003

	Rates	Fringes
Roofer	$ 26.45	7.99

SFMO0314-001 07/01/2004

	Rates	Fringes
Sprinkler Fitter	$ 31.30	11.40

SHEE0002-011 07/01/1995

	Rates	Fringes
Sheet Metal Worker	$ 8.50	3.19+a

a. PAID HOLIDAY: Labor Day.

TEAM0541-009 01/01/1991

	Rates	Fringes
Truck drivers:		
GROUP 1	$ 15.28	4.25+a
GROUP 2	$ 15.34	4.25+a
GROUP 3	$ 15.54	4.25+a
GROUP 4	$ 15.41	4.25+a
GROUP 5	$ 15.43	4.25+a
GROUP 6	$ 15.64	4.25+a

TRUCK DRIVERSLASSIFICATIONS

GROUP 1: Warehousemen and stockmen.

GROUP 2: Flat beds; pick-up; drum trucks under 10 yds.

GROUP 3: Straddle trucks, wheel tractors (when used for towing); hydrolift trucks, hydraulically operated aerial lifts; heavy hauling, A-frame and winch fork trucks; heavy excavating (dumpster, euclid, etc.); double bottom units (20 tons capacity and over)

GROUP 4: Dump trucks, 10 yards and over, steel drivers; semi-truck drivers

GROUP 5: Distributor truck drivers and operators, oilers,greasers and mechanics' tenders

GROUP 6: Mechanics

FOOTNOTE a: An employee who has worked 1300 hrs. or more for an employer during the last full year shall receive 1 week vacation with pay for that year.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

EXHIBIT G-5

PHASE IV/IB DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

PHASE IV/IB DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

[redacted] as Design/Builder

Dated as of October 1, 2006

400401936_13.DOC

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PHASE IV/IB DESIGN/BUILD AGREEMENT

This Phase IV/IB Design/Build Agreement (this "**Agreement**") dated as of October 1, 2006 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and [redacted] (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "Additional Services Fee" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.2 "Affiliate" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.3 "Agreement" means this Phase IV/IB Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.4 "Alternate" shall have the meaning set forth in Section 9.3.2 hereof.

1.5 "Applicable Laws" means all laws (including, without limitation, the Davis Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the applicable Sites and/or the Work.

1.6 "Application for Payment" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.7 "Architect" means [redacted] (as the case may be).

1.8 "Authorized Representatives" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.9 "Certificate of Substantial Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Work or applicable portion thereof is Substantially Complete.

1.10 "Certificate of Final Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.11 "Change Directive" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.12 "Change Order" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.13 "Change Proposal" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.14 "Civil Engineer" means

1.15 "Claims" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.16 "Company" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.17 "Company Event of Default" shall have the meaning set forth in Section 12.3 hereof.

1.18 "Company Indemnified Parties" means the Company, its members, agents, partners and employees.

1.20 "Construction Agreement" means that certain Phase IV/IB Construction Agreement between the Contractor and the Design/Builder of even date herewith, as amended and modified from time to time.

1.21 "Construction Consultant" means that certain Phase IV/IB Construction Consultant.

1.22 "Construction Documents" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and

incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Plans and Specifications must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.23 "Construction Notice to Proceed" means the notice given by the Company to the Design/Builder stating that a Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.24 "Construction Phase" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.25 "Construction Work" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.26 "Contract Documents" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.27 "Contract Time" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.28 "Contractor" means the [redacted].

1.29 "Contingency" shall have the meaning set forth in Section 5.17.

1.30 "Cost of the Work" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D.

1.31 "CPM" means a critical path method schedule in the form of precedents, networks and time sequences.

1.32 "Credit Provider" shall have the meaning as set forth in the Second Amended and Restated Operating Agreement.

1.33 "D/B Submission" shall have the meaning set forth in Exhibit F attached hereto.

1.34 **"Day" or "Days"** means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. **"Business Day"** or **"Business Days"** means Days other than weekend, national or local holidays in which federal or state government agencies in the State of California are open for business.

1.35 **"Design/Builder"** means l
y.

1.36 **"Design/Builder Event of Default"** shall have the meaning set forth in Section 12.1 hereof.

1.37 **"Design/Builder Indemnified Parties"** means the Design/Builder, the Contractor and the Architect, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.38 **"Design/Builder Initiated Change Orders"** shall have the meaning set forth in Section 5.1.4 hereof.

1.39 **"Design Group"** means all architects and engineers having a contract with the Design/Builder or Architect to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.40 **"Design Materials"** means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.41 **"Design Phase"** means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.42 **"Design Work"** means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.43 **"Effective Date"** shall have the meaning set forth in the first paragraph of this Agreement.

1.44 **"Environmental Documents"** means the environmental documents listed on Exhibit C.

1.45 **"Excusable Delay"** shall have the meaning set forth in Section 4.6.1 hereof.

1.46 **"Fee"** means the fee payable to the Design/Builder.

1.47 "Final Completion" or "Finally Complete" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.48 "First Mortgage Loan Documents" shall have the meaning as set forth in the Second Amended and Restated Operating Agreement.

1.49 "Force Majeure" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.51 "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.52 "Hazardous Materials" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the

foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.53

1.54 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1.

1.55 "**Landscaping Work**" shall mean the landscaping provided for new replacement units and existing units as more fully described in Exhibit A.

1.56 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4.

1.57 "**Managing Member**" means which is the managing member of the Company.

1.58 "**Mobilization Plan**" shall have the meaning set forth in Section 2.11 hereof.

1.59 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.60 "**Notice to Begin Design**" means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.61 "**Option**" shall have the meaning set forth in Section 2.1.

1.62 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.63 "**Overhead**" means

1.64 "Party" or "Parties" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.65 "Payment and Performance Bonds" means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor, as required under the Construction Agreement.

1.66 "Phase IV/IB Construction Consultant" shall have the meaning as set forth in the Second Amended and Restated Operating Agreement.

1.67 "Phase IV Offer" shall have the meaning as set forth in the Second Amended and Restated Operating Agreement.

1.68 "Phase IV RFP" shall have the meaning as set forth in the Second Amended and Restated Operating Agreement.

1.69 "Phase IB Site" means the property identified on Exhibit I-1 attached hereto.

1.70 "Phase IV Site" means the property identified on Exhibit I-2 attached hereto.

1.71 "Phases" means the construction phases of the Project described in Exhibit G, as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Construction Agreement are initially included as alternates under the Construction Agreement and will be incorporated into the Construction Agreement by Change Order prior to the commencement of each such Phase.

1.72 "Product Data" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.73 "Project" means the facilities located on the Sites, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.74 "Punch list" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.75 "Rehabilitation Work" shall mean the rehabilitation of existing residential units as more fully described in Exhibit A.

1.76 "Resident Officer in Charge of Construction" or "ROICC" shall have the meaning set forth in Section 2.16.1 hereof.

1.77 **"Retainage"** means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.78 **"Samples"** shall have the meaning set forth in Section 2.15.2.3 hereof.

1.79 **"Santa Margarita Site"** means the property identified on Exhibit I-4 attached hereto.

1.81 **"Schedule"** means the schedule attached hereto as Exhibit H, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.82 **"Scheduled Date of Substantial Completion"** means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.83 **"Scope of Work Submittal Documents"** means the drawings, specifications and other documents prepared for the Design/Builder by the Architect (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Scope of Work Submittal Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.84 **"Second Amended and Restated Operating Agreement"** means that certain Second Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2006.

1.85 **"Self-Performed Work"** shall have the meaning set forth in Section 8.3 hereof.

1.86 **"Separate Contractors"** means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.87 **"Shop Drawings"** shall have the meaning set forth in Section 2.15.2.1 hereof.

1.88 **"Sites"** means the Phase IV Site, the Phase IB Site, the Wire Mountain III Site and the Santa Margarita Site (each of which may be referred to herein individually as a **"Site"**), as more fully described on Exhibit I-1, Exhibit I-2, Exhibit I-3 and Exhibit I-4 hereto, and any other real property on which the Work will be performed.

1.89 **"Subcontract"** means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work.

1.90 **"Subcontractor"** means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.91 **"Substantial Completion" or "Substantially Complete"** means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.92 **"Surety"** means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the applicable state where the Project is located.

1.93 **"Team Subcontract"** means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement.

1.94 **"Team Subcontractors"** means the Contractor and the Architect.

1.95 **"Trustee"** shall have the meaning set forth in the Second Amended and Restated Operating Agreement.

1.96 **"United States Member"** means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.97 **"Wire Mountain III Site"** means the property identified on Exhibit I-3 attached hereto.

1.98 **"Work" or "Scope of Work"** means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work, Rehabilitation Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder

covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the date(s) of Substantial Completion set forth in the Schedule attached as Exhibit H, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, **"Claims"**) (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Sites; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Contract Documents listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Sites (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Phase IV IFP, the Contract Documents listed on Exhibit C, the Phase I IFP (as it relates to the Phase IB Work), or known as of the Effective Date by the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A). Any other Hazardous Materials besides the ones specifically identified in this Section 2.4.2 are not included in the Scope of Work.

2.5 Scope of Work Submittal Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibits H and J hereto, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibits H and J hereto.

2.6 Legal Requirements.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the

Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting the [redacted] Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company withir Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Phase IV Offer and the general intent of the Phase IV IFP (and the Phase I Offer and Phase I IFP to the extent they relate to the Phase IB Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Renovation Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Rehabilitation Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of

the Phase IV Offer and the general intent of the Phase IV IFP (and the Phase I Offer and Phase I IFP to the extent they relate to the Phase IB Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase IV Offer and the general intent of the Phase IV IFP (and the Phase I Offer and Phase I IFP to the extent they relate to the Phase IB Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion of such building or group of buildings. If within [redacted] after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of [redacted] hall be extended with

respect to portions of the Work first performed after Substantial Completion of such building to [redacted] after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work [redacted] have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company t[redacted].

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Omitted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work, Rehabilitation Work and/or Landscaping Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within [redacted] Days after written notice, the Company may, upon [redacted] Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder or the Contractor, as appropriate)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work, Rehabilitation Work and/or Landscaping Work which is not in accordance

with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance. If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Sites portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule and shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

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2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Sites at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Sites.

The Design/Builder shall prepare a mobilization plan, prior to the start of each Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each, a "**Mobilization Plan**"). The Mobilization Plans shall outline all mobilization requirements of the Project including schedule for equipment mobilization and

demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Sites to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Sites with materials or equipment. The Design/Builder shall at all times confine its access and use of the Sites to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Sites, or relevant portions thereof, at certain times, and to the extent that any or all of the Sites are not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Sites and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Sites, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Sites in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents after Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Sites. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Sites one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Sites approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company within a reasonable time after Final Completion of the Work but not to exceed

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, a Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "Samples" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Resident Officer in Charge of Construction ("**ROICC**") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate). If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents,

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Sites, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens withi Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching site utilities, materials, or other site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule and the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder or the Contractor, as appropriate).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be

amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule [redacted] n accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Sites by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Sites. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Sites by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's

obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architects' agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence

a cure of such persistent and material failure within [redacted] Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such [redacted] Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a [redacted] Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such [redacted] Day period give the Design/Builder a second written notice to correct such deficiencies within such s[redacted] Day period. If the Design/Builder within such [redacted] Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion dates for each building. The dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that

the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within [redacted] Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for each Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an **"Excusable Delay"** (to the extent not set forth below, a delay will be considered an **"Inexcusable Delay"**).

4.6.1.1 Failure or inability of the Company to make available any or all of the Sites in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Sites not brought to the Sites by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Company in accordance with the Change Order provisions of this Agreement.

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the scheduled date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement t

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (to include the United States Member) have agreed upon the schedule of values shown in Exhibit E, which set forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any

portion of an Application for Payment, it shall notify the Design/Builder in writing within Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on each Phase shall be withheld until the Phase is mplete; thereafter, no further Retainage will be withheld on that Phase. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, less f the value of any uncompleted Work or Punch list items relating to such building. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released with Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Sites for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Sites, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the

Design/Builder may, upon [redacted] Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule and GMP shall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of [redacted]

5.11 Substantial Completion.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than [redacted] Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security

interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Sites and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Sites during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Sites.

The Design/Builder shall maintain at the Sites for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in the First Mortgage Loan Documents. Notwithstanding the foregoing (1) reduction in the line item amount for Landscape Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the e Schedule. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in tl Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedule ıch disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall hav Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A, t

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Project is delayed beyond October 1, 2006 for any reason other than the fault of the Design/Builder

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6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of each building, unit or other portion of the Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work

performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with each Architect pursuant to which the Design/Builder shall delegate all design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination

of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess o The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work on either Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees, Prior to the commencement of the Work on any alternate under the Construction Agreement (**"Alternate"**), the Surety that issued the relevant Payment Bond and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment Bond and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees and shall be in the forms set forth on Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the

Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Sites under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Sites or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration (**"OSHA"**).

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the

Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work.

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Sites who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or any Site to be loaded so as to endanger their safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Sites and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure each Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Sites.

The Design/Builder shall be responsible for any and all damage to property at the Sites except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after [redacted] Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such [redacted] Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within [redacted] Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and [redacted]

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within [redacted] Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by

the Parties. The mediator shall be given written statements of the Parties and may review the Site(s) and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute: During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a **"Design/Builder Event of Default"**:

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, afte Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated withir Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Sites and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a **"Company Event of Default"**:

12.3.1 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of [redacted] Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Second Amended and Restated Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within [redacted] Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to the [redacted] Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065

Reference: Camp Pendleton & Quantico PPV

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part

hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Phase IV/IB Design/Builder's Consent Agreement dated as of even date herewith executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy,

completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until [redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

[Signature Page to Phase IV/IB Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Pages]

DESIGN BUILDER:

[Signature Page to Phase IV/IB Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Company Governmental Approvals
Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I-1	-	Phase IB Site Description
Exhibit I-2	-	Phase IV Site Description
Exhibit I-3	-	Wire Mountain III Site Description
Exhibit I-4	-	Santa Margarita Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination

EXHIBIT A

SCOPE OF WORK

[ATTACHED]

5

26

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

37

44

1

Exhibit A

G-5-129

1

Exhibit A

G-5-132

1

Exhibit A

1

Exhibit A

G-5-138

1

Exhibit A

G-5-141

1

Exhibit A

1

Exhibit A

Camp Pendleton Phase IV

1

Exhibit A

Camp Pendleton Phase IV

A-90

31 March 2006

Shade Structure

1

Exhibit A

G-5-200

1

Exhibit A

Camp Pendleton Phase IV

A-161

Exhibit A

Camp Pendleton Phase IV

A-162

Exhibit A

G-5-268

Exhibit A

Camp Pendleton Phase IV

Exhibit A

Camp Pendleton Phase IV

Exhibit A

LOCATION	SCOPE DESCRIPTION
	Replace existing 6" meter installed by [redacted] on Phase 1 with 2 new meter assemblies: One forward flow, capable of reading flows down to 2.5 gpm, that is RF drive by readable. If brought above ground, install fence, concrete pad. 2nd meter assembly to be reverse flow, capable of reading flows down to 2.5 gpm, that is RF drive by readable, concrete pad, install fence.
	Replace existing 12" meter installed by [redacted] on Phase I with new 12" forward flow meter assembly, capable of reading flows down to 2.5 gpm, that is RF drive by readable. Meter to be installed above ground with new concrete pad and fence.
	Existing 12" Meter located North East of the Elementary School, to rebuild existing meter assembly, convert to RF drive by readable, install concrete pad and fence.
	Replace the existing PRV assembly located North East of the Elementary School. Install concrete pad and 6' chain link fence with 3 rows barb wire and asphalt to 2' outside of gate. PRV to be above ground.
	Replace existing 12" with new 12" forward flow meter assembly, capable of reading flows down to 2.5 gpm, that is RF drive by readable. Meter to be installed above ground. Will use the existing concrete pad and fence.
	Replace existing 8" meter installed by [redacted] on Phase I with new 8" forward flow meter assembly, capable of reading flows down to 2.5 gpm, that is RF drive by readable. Meter to be installed above ground with new fence. Will use existing concrete pad.
	Two booster pumps, replace two 10" meters with new 10" forward flow meter assembly, capable of reading flows down to 2.5 gpm, that is RF drive by readable. Meter to be installed above ground with new concrete pad. We will use the existing fence.
	Two Deduct meters at West end of site are made up of 4 Neptune meters each (total of 8 – 6" Neptune Meters). Rebuild existing meter assemblies; install a total of 8 – 6" new meters that are RF drive by readable heads. Will use the existing concrete pads and fencing.
	Install new deduct meter at the Youth/Teen Center, meter to be RF drive b7y readable head.
	Four existing PRV stations, replace existing PRV assemblies as shown on attached drawing sheet PRV-1. A total of 5 PRVs are to be installed as depicted on page 35 of CLA-VAL company product data guide. At each location install concrete pad and 6' chain link fence with 3 rows barb wire and asphalt from concrete pad to 2' outside of gate. All PRVs to be above ground.

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

1. Environmental Baseline Survey for Site 6 For the San Diego Regional Public Private Venture, Marine Corps Base Camp Pendleton, California, dated July, 2002, prepared by for Department of the Navy, Naval Facilities Engineering Command, Southwest Division

2. Environmental Baseline Survey for Site 1 for the San Diego Regional Public Private Venture, Marine Base Camp Pendleton, California, dated July, 2002, prepared by for Department of the Navy, Naval Facilities Engineering Command, Southwest Division

3. Environmental Baseline Survey for Site 3 For the San Diego Regional Public Private Venture, Marine Base Camp Pendleton, California, dated July, 2002, prepared by for Department of the Navy, Naval Facilities Engineering Command, Southwest Division

4. Environmental Baseline Survey for Site 8 (For the San Diego Regional Public Private Venture, Marine Base Camp Pendleton, California, dated July, 2002, prepared by for Department of the Navy, Naval Facilities Engineering Command, Southwest Division

5. Environmental Baseline Survey for Site 5 For the San Diego Regional Public Private Venture, Marine Base Camp Pendleton, California, dated July, 2002, prepared by for Department of the Navy, Naval Facilities Engineering Command, Southwest Division

6. Final: Environmental Baseline Survey at dated June 28, 2004, prepared by Federal Programs Corporation for Department of the Navy, Naval Facilities Engineering Command (with respect to the only)

7. Final Environmental Baseline Survey for Public Private Venture Phase IV Military Family Housing Marine Corps Base Camp Pendleton, California, prepared for Department of the Navy, Naval Facilities Engineering Command Southwest, and prepared by CDM Federal Programs Corporation, on August 23, 2006

8. Environmental Baseline Survey (EBS) Update Park Marine Corps Base (MCB) Camp Pendleton, California, Naval Facilities Engineering Command, Southwest, dated September 15, 2006

9. Environmental Baseline Survey (EBS) Update Area 1, Military Family Housing, Marine Corps Base (MCB) Camp Pendleton,

California, Naval Facilities Engineering Command, Southwest, dated September 15, 2006

10. Final: Phase I, Environmental Site Assessment For the Marine Corps Base Camp Pendleton: San Diego Regional Public Private Venture, California, dated September 11, 2003, prepared by (with respect to the Phase IB Site, Site)

11. Final Phase I, Environmental Site Assessment for Family Housing and Marine Corps Base Camp Pendleton, California: dated September 10, 2004, prepared by for Camp Pendleton & Quantico Housing, LLC and Camp Pendleton (with respect to the Mobile Home Park only)

12. Final Phase I Environmental Site Assessment: Public Private Venture Phase IV Military Family Housing, Marine Corps Base Camp Pendleton, California: dated September 2006, prepared by for Camp Pendleton & Quantico Housing, LLC

13. Final Phase II Environmental Site Assessment: Building 20006 – Housing Area, Camp Pendleton Public Private Venture IV, Marine Corps Base Camp Pendleton, California: dated September 2006, prepared by for Camp Pendleton & Quantico Housing, LLC

14. General Decision Number: CA030001 12/23/2005 CA1, Mod-21 dated 12/23/05

15. Soils Report with Boring Logs — Final Report Pending

16. SWPPP Storm Water Pollution Prevention Plan — Final Report Pending

17. Construction Plans and Specifications for Phase IV/IB — See Following Pages

Exh. C-2

EXHIBIT D

COST OF THE WORK

Exh. D-2

Exh. D-3

Exh. D-4

Exh. D-5

EXHIBIT E

Exh. E-2

Exh. E-3

EXHIBIT F

COMPANY GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible:

Department of the Navy:

1. Prior to the commencement of construction, an Environmental Protection Plan ("**EPP**") will be submitted to and approved by the Department of the Navy (the "**DoN**"). The EPP will include the following, to the extent applicable:

   1.1 Copies of required applicable permits and licenses

   1.2 Worker Health & Safety Plan

   1.3 Hazardous Materials Response Plan

   1.4 Storm Water Management Plan – implemented post construction

   1.5 Notice of Intent for general construction storm water permit

   1.6 Storm Water Pollution Prevention Plan – implemented during construction

   1.7 Air Sampling and Analysis Plan

   1.8 Noise Monitoring and Abatement Plan

2. Prior to the commencement of construction, a demolition Plan will be submitted to and approved by the DoN.

3. Obtain written approval by the DoN on final design Plans and Specifications will be submitted in accordance with Exhibit J of this Agreement.

4. Obtain any required Depredation Permits for trees, migratory birds, etc.

5. Provide all approvals and oversight, if necessary, to ensure that the Scope of Work as submitted by the Design/Builder satisfies all natural and cultural resources requirements as outlined in the Company documents.

City of San Diego:

6. City of San Diego permits will not be required for any Work within the Sites.

San Diego Air Pollution Control District:

7. The Company is required to notify the San Diego Air Pollution Control District ("**SDAPCD**") of any and all construction related activity including, but not limited to, demolition, site work, vertical construction and public/private infrastructure construction.

Third Party Plan Review:

8. The Company shall obtain a third party to review the Plans and Specifications for approval.

Utilities:

9. The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging PWC utilities.

Group Approvals:

10. Currently there are no known required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

11. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Sites, such approvals shall be the responsibility of the Company.

The term "**D/B Submission**" shall mean any of the items described in paragraphs 1, 2, 4, and 5 above, or any component thereof.

EXHIBIT G

PROJECT PHASES

[redacted]

EXHIBIT H

EXHIBIT I-1

PHASE IB SITE DESCRIPTION

That certain land owned by the Company serving Marine Corps Base Camp Pendleton, San Diego County, California and part of Phase IB of the CPQ Project (as such terms are defined in the Second Amended and Restated Operating Agreement), as more particularly identified and described in Exhibit A-1b to the Second Amended and Restated Operating Agreement, together with any improvements located thereon.

EXHIBIT I-2

PHASE IV SITE DESCRIPTION

That certain land owned by the Company serving Marine Corps Base Camp Pendleton, San Diego County, California and part of Phase IV of the CPQ Project (as such terms are defined in the Second Amended and Restated Operating Agreement), as more particularly identified and described in Exhibit A-6 to the Second Amended and Restated Operating Agreement, together with any improvements located thereon.

EXHIBIT I-3

WIRE MOUNTAIN III SITE DESCRIPTION

That certain land owned by the Company serving Marine Corps Base Camp Pendleton, San Diego County, California, commonly referred to as the Wire Mountain III neighborhood and part of Phase IA of the CPQ Project (as such terms are defined in the Second Amended and Restated Operating Agreement), as more particularly identified and described in Exhibit A-1a to the Second Amended and Restated Operating Agreement, together with any improvements located thereon.

EXHIBIT I-4

SANTA MARGARITA SITE DESCRIPTION

That certain land owned by the Company serving Marine Corps Base Camp Pendleton, San Diego County, California, commonly referred to as the Santa Margarita neighborhood and part of Phase IA of the CPQ Project (as such terms are defined in the Second Amended and Restated Operating Agreement), as more particularly identified and described in Exhibit A-1a to the Second Amended and Restated Operating Agreement, together with any improvements located thereon.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] Days of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the fourteen day review time, then after [redacted] Business Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work:

[DESIGN SUMMARY ATTACHED]

[redacted]

Exh. J-2

EXHIBIT K

AUTHORIZED REPRESENTATIVES

Camp Pendleton & Quantico Housing, LLC (the "Company") Representatives:

Mr. Scott D. Forrest
Naval Facilities Engineering Command
1322 Patterson Avenue, SE
Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Attention: Special Ventures Acquisition Department
Phone: 202-685-9158
Fax: 202-685-1569

Exh. K-2

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

ations,
, and
tual

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

Exh. L-2

Off-Site Storage based on Project development and exposure.

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using I Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

DESIGN GROUP MEMBERS

Exh. M-2

Exh. M-3

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT AND PERFORMANCE BOND

SEE TAB NO. 23 BELOW

EXHIBIT N-2

FORM OF SUBCONTRACTOR BONDS

PAYMENT BOND
(Subcontract)

Exh. N-2-2

CO-OBLIGEE RIDER

Exh. N-2-3

Exh. N-2-3

EXHIBIT O

[redacted]

Exh. O-2

Exh. O-3

EXHIBIT P

DAVIS BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to as **"Contractor"** or **"Prime Contractor"**) shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision (attached hereto as Appendix P-1), and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

[SEE ATTACHED]

APPENDIX P-1

DAVIS-BACON WAGE DETERMINATION

Appendix 6 contains Davis-Bacon Wage Determination as of 12/23/2005 for **San Diego County**, California. It is the offerors responsibility to obtain and incorporate updated information at http://www.wdol.gov/ for their submittal. The DoN upon request will provide updated information. For purposes of closing and the initial development period for this phase of the CPQH project, the Offeror should use the rates at the time of IFP submittal.

General Decision Number: CA030001 12/23/2005 CA1

Superseded General Decision Number: CA020001

State: California

Construction Types: Building, Heavy (Heavy, and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	06/13/2003
1	01/30/2004
2	02/13/2004
3	03/12/2004
4	03/26/2004
5	05/21/2004
6	07/16/2004
7	08/27/2004
8	10/08/2004
9	11/19/2004
10	01/14/2005
11	01/28/2005
12	02/11/2005
13	04/08/2005
14	06/17/2005

15	07/22/2005
16	08/05/2005
17	08/19/2005
18	09/09/2005
19	11/18/2005
20	12/02/2005
21	12/23/2005

ASBE0005-002 08/01/2004

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems)	$ 34.06	9.84

ASBE0005-004 08/01/2005

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)	$ 19.20	6.38

* BOIL0092-003 10/01/2005

	Rates	Fringes
Boilermaker	$ 33.19	17.86

* BRCA0004-008 11/01/2005

	Rates	Fringes
Bricklayer; Marble Setter	$ 29.00	9.70

BRCA0018-004 09/01/2005

	Rates	Fringes
Marble Finisher	$ 21.52	6.65
Tile Finisher	$ 17.82	6.00
Tile Layer	$ 28.30	10.47

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* BRCA0018-010 11/01/2005

	Rates	Fringes
Terrazzo Finisher	$ 23.59	7.99
Terrazzo Worker	$ 30.63	8.46

CARP0409-002 07/01/2005

	Rates	Fringes
Diver		
(1) Wet	$ 557.44	8.47
(2) Standby	$ 278.72	8.47
(3) Tender	$ 270.72	8.47

Amounts in "Rates' column are per day

CARP0409-008 07/01/2003

	Rates	Fringes
Modular Furniture Installer		
(1) Mobile Filing System Installer	$ 13.76	5.80
(2) Modular Furniture Installer	$ 14.36	5.80
(3) Full Wall Technician	$ 20.47	5.80
Full Wall Technician	$ 20.47	5.80
Mobile Filing System Installer	$ 13.76	5.80
Modular Furniture Installer	$ 14.36	5.80

CARP0547-001 07/01/2005

	Rates	Fringes
Carpenters:		

(1) Bridge.....$ 31.64 8.47
(2) Commercial Building....$ 28.06 8.47
(3) Heavy & Highway.....$ 31.51 8.47
(4) Residential / Light
Commercial.....$ 24.75 8.47
Millwright.....$ 32.01 8.47
Piledriver.....$ 31.64 8.47

CARP0547-002 07/01/2005

	Rates	Fringes
Drywall		
(1) Work on wood framed construction of single family residences, apartments or condominiums under four stories		
Drywall Installer/Lather...	$ 19.00	6.47
Drywall Stocker/Scrapper...	$ 11.00	4.96
(2) All other work		
Drywall Installer / Lather.	$ 24.96	6.47
Drywall Stocker/Scrapper...	$ 11.00	4.96

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* ELEC0569-001 12/01/2005

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer.....	$ 33.47	3%+9.55
Electrician.....	$ 32.63	3%+9.55
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer.....	$ 29.75	3%+9.55

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* ELEC0569-005 12/01/2005

	Rates	Fringes
Sound & Communications		
Sound Technician.....	$ 21.65	3%+9.08
Soundman.....	$ 16.24	3%+7.51

SOUND TECHNICIAN: Terminating, operating and performing final check-out

SOUNDMAN: Wire-pulling, splicing, assembling and installing devices

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

ELEC0569-006 07/01/2005

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
Traffic signal, street light and underground work		
Utility Technician #1	$ 18.15	3%+6.62
Utility Technician #2	$ 16.50	3%+6.62

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

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* ELEC0569-008 06/01/2005

	Rates	Fringes
Electrician (Residential, 1-3 Stories)	$ 18.25	3%+2.55

ELEC1245-001 06/01/2005

	Rates	Fringes
Line Construction		
(1) Lineman; Cable splicer	$ 36.51	3.75%+10.03
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), and overhead and underground distribution line equipment)	$ 31.03	3.75%+9.25
(3) Groundman	$ 23.73	3.75%+9.25
(4) Powderman	$ 34.69	3.75%+9.29

ELEV0018-001 01/01/2005

	Rates	Fringes
Elevator Mechanic	$ 38.215	12.015

FOOTNOTE:
Vacation Pay: 8% with 5 or more years of service, 6% for 6 months to 5 years service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

ENGI0012-003 07/01/2005

	Rates	Fringes

Power Equipment Operators
(Cranes, Piledriving & Hoisting)

GROUP 1	$ 31.45	14.95
GROUP 2	$ 32.23	14.95
GROUP 3	$ 32.52	14.95
GROUP 4	$ 32.66	14.95
GROUP 5	$ 32.88	14.95
GROUP 6	$ 32.99	14.95
GROUP 7	$ 33.11	14.95
GROUP 8	$ 33.28	14.95
GROUP 9	$ 33.45	14.95
GROUP 10	$ 34.45	14.95
GROUP 11	$ 35.45	14.95
GROUP 12	$ 36.45	14.95
GROUP 13	$ 37.45	14.95

Power Equipment Operators
(Tunnel Work)

GROUP 1	$ 32.73	14.95
GROUP 2	$ 33.02	14.95
GROUP 3	$ 33.16	14.95
GROUP 4	$ 33.38	14.95
GROUP 5	$ 33.49	14.95
GROUP 6	$ 33.61	14.95
GROUP 7	$ 33.91	14.95

Power Equipment Operators

GROUP 1	$ 30.10	14.95
GROUP 2	$ 30.88	14.95
GROUP 3	$ 31.17	14.95
GROUP 4	$ 32.16	14.95
GROUP 5	$ 33.76	14.95
GROUP 6	$ 32.88	14.95
GROUP 7	$ 33.98	14.95
GROUP 8	$ 32.99	14.95
GROUP 9	$ 34.09	14.95
GROUP 10	$ 33.11	14.95
GROUP 11	$ 34.21	14.95
GROUP 12	$ 33.28	14.95
GROUP 13	$ 33.38	14.95
GROUP 14	$ 33.41	14.95
GROUP 15	$ 33.49	14.95
GROUP 16	$ 33.61	14.95
GROUP 17	$ 33.78	14.95
GROUP 18	$ 33.88	14.95
GROUP 19	$ 33.99	14.95

GROUP 20	$ 34.11	14.95
GROUP 21	$ 34.28	14.95
GROUP 22	$ 34.38	14.95
GROUP 23	$ 34.49	14.95
GROUP 24	$ 34.61	14.95
GROUP 25	$ 34.78	14.95

FOOTNOTES:

PREMIUM PAY of $3.75 per hour shall be paid on all power equipment operator work at Camp Pendleton, Point Arguello, and Vandenburg AFB.

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine oeprator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (side steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or

similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or

finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types

(Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine,

Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator,

operating in tandem (scrapers, belly dumps and similar types in any combination; excluding compaction units - multiple engine; Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs,

Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGI0012-004 08/01/2005

	Rates	Fringes
Power equipment operators: (DREDGING)		

(1) Leverman.....$ 38.10 14.95
(2) Dredge dozer.....$ 33.63 14.95
(3) Deckmate.....$ 33.52 14.95
(4) Winch operator (stern winch on dredge).....$ 32.97 14.95
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....$ 32.43 14.95
(6) Barge Mate.....$ 33.04 14.95

IRON0002-004 07/01/2005

	Rates	Fringes
Ironworkers:		
Fence Erector	$ 31.16	15.285
Ornamental, Reinforcing and Structural	$ 32.06	15.285

PREMIUM PAY:

$3.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$2.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$1.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0089-001 07/01/2005

	Rates	Fringes
Laborers		

(RESIDENTIAL CONSTRUCTION -
See definition below)

(1) Cleanup, Landscaping, Fencing (chain link or wood)	$ 19.39	9.44
(2) All other work	$ 20.53	9.44

Laborers: (BUILDING and all other Residential Construction)

Group 1	$ 22.48	10.85
Group 2	$ 23.08	10.85
Group 3	$ 23.71	10.85
Group 4	$ 25.47	10.85
Group 5	$ 25.86	10.85

9.44RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man; top man), filing
of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form

oiler; Cutting torch operator (demoliton); Guinea chaser; Headboard man-asphlt; Laborer,
packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riiprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including
drilling of same); Hydro seeder and similar type; Impact wrench, mult-plate; Kettlemen, potmen and mean applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying
means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air blasting, come-along, and similar mechanicl tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and inclduing rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scaarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, apshalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of oepration, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the
conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without

regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all pwder and explosives of whatever type, regardless of method used for such loading and placing; Driller-
all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LABO0089-002 05/01/2005

	Rates	Fringes
Mason Tender	$ 21.90	10.04

LABO0089-004 07/01/2005

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
GROUP 1	$ 22.02	10.85
GROUP 2	$ 22.46	10.85
GROUP 3	$ 22.85	10.85
GROUP 4	$ 23.66	10.85
GROUP 5	$ 24.74	10.85

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber,Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and

Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/'2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-klold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket jlints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer - Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter,Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work. High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled

Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting,m makeing of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prfefabricated Manhole Installer, Sandblast Nozzleman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

LABO0300-008 08/03/2005

	Rates	Fringes
Plaster Clean-up Laborer.....	$ 21.63	12.72
Plasterer tender.....	$ 24.18	12.72

Work at Military Bases - $3.00 additional per hour: Coronado Naval Amphibious Base, Fort Irwin, George AFB, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

LABO0882-001 01/01/2005

	Rates	Fringes
Asbestos Removal Laborer.....	$ 22.50	10.10

SCOPE OF WORK: includes site mobilization, initial site clean-up, site preparation, removal of asbestos-containing material and toxic waste (including lead abatement and any other toxic materials), encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste (including lead abatement and any other toxic materials) by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers, and assembly of decontamination stations.

LABO1184-001 07/01/2005

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	$ 22.14	8.36
(2) Vehicle Operator/Hauler.	$ 22.31	8.36
(3) Horizontal Directional Drill Operator.....	$ 24.16	8.36
(4) Electronic Tracking Locator.....	$ 26.16	8.36
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	$ 22.67	11.19
GROUP 2.....	$ 23.97	11.19
GROUP 3.....	$ 25.98	11.19
GROUP 4.....	$ 27.72	11.19

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method

(sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-004 07/01/2005

	Rates	Fringes
Painters: (Including Lead Abatement)		
Building & Heavy Construction	$ 26.67	7.49
Residential Construction	$ 20.05	5.10

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* PAIN0036-010 10/01/2005

	Rates	Fringes
Drywall Finisher		
(1) Building & Heavy Construction	$ 21.35	8.83
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four		

stories).....$ 18.00 5.76

PAIN0036-012 09/07/2004

	Rates	Fringes
Glazier	$ 28.00	10.75

PAIN0036-019 02/01/2005

	Rates	Fringes
Soft Floor Layer	$ 20.82	7.90

PLAS0200-005 01/01/2005

	Rates	Fringes
Plasterer	$ 24.03	7.12

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS BASE, IMPERIAL BEACH NAVAL AIR STATION: $3.00 additional per hour.

PLAS0500-001 06/28/2005

	Rates	Fringes
Cement Mason		
GROUP 1	$ 23.79	6.33
GROUP 2	$ 25.44	6.33
GROUP 3	$ 28.12	6.43

CEMENT MASONS - work inside the building line, meeting the following criteria:

GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.

GROUP2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 07/01/2005

	Rates	Fringes
Plumber, Pipefitter, Steamfitter		
(1) Work on strip malls, light commercial, tenant improvement and remodel work	$ 24.19	10.44
(2) Work on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space.....	$ 30.32	12.06
(3) All other work.....	$ 31.36	12.63
(4) Camp Pendleton.....	$ 33.61	12.63

PLUM0016-011 07/01/2005

	Rates	Fringes
Plumber/Pipefitter		
Residential.....	$ 25.32	9.88

PLUM0345-001 07/01/2005

	Rates	Fringes
Plumbers		
Landscape/Irrigation Fitter	$ 23.98	11.85
Sewer & Storm Drain Work....	$ 21.06	12.21

ROOF0045-001 08/01/2005

	Rates	Fringes
Roofer (including Built Up, Composition and Single Ply)....	$ 21.95	5.38

SFCA0669-001 01/01/2005

	Rates	Fringes
Sprinkler Fitter, Fire.....	$ 24.50	11.50

SHEE0206-001 07/01/2005

	Rates	Fringes
Sheet metal worker		
Camp Pendleton	$ 29.93	13.88
Remainder of San Diego County	$ 27.93	13.88
Sheet Metal		
Sheet Metal Technician	$ 20.66	4.53

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000. e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

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TEAM0036-001 06/01/2005

	Rates	Fringes
Truck drivers:		
GROUP 1	$ 13.41	12.77
GROUP 2	$ 23.00	12.77
GROUP 3	$ 23.20	12.77
GROUP 4	$ 23.40	12.77
GROUP 5	$ 23.60	12.77
GROUP 6	$ 24.10	12.77
GROUP 7	$ 25.60	12.77

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Swamper; fuel person (fueler without trucks)

GROUP 2: Two-axle dump trucks; two-axle flat bed; bunkerman concrete pumping truck; industrial lift truck; forklift under 15,000 lbs

GROUP 3: Two-axle water truck; three-axle dump truck; three-axle flat bed; erosion control nozzleman; dumpcrete truck less than 6 1/2 yd00; forklift 15,000 lbs. and over; Prell truck; pipeline work truck driver; road oil spreader, cement distributor or slurry driver; bootman; Ross carrier

GROUP 4: Off-road dump trucks under 35 tons mfg rated capacity; four axles but less than seven axles; low-bed truck and trailer; transit mix trucks under 8 yds.; three axle water trucks; erosion control drive; grout mixer truck; dumpcrete, 6- 1/2 yds. and over; dumpster trucks; DW 10's, 20's and over; fuel truck and dynamite; truck greaser; truck mounted mobile sweeper; winch truck, two axles

GROUP 5: Off-road dump trucks 35 tons and over mfg rated capacity; 7 axles or more; transit mix trucks 8 yds. and over; A- frame trucks or Swedish crane; tireman, winch truck 3 axles or more

GROUP 6: Off-road special equipment (including but not limited to water pull tankers, Athey wagons, DJB, B70 Euclids or like equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=

END OF GENERAL DECISION

EXHIBIT G-6

PHASE V PENDLETON DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

PHASE V PENDLETON DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

[redacted] as Design/Builder

Dated as of October 1, 2007

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PHASE V PENDLETON DESIGN/BUILD AGREEMENT

This Phase V Pendleton Design/Build Agreement (this "**Agreement**") dated as of October 1, 2007 and effective for all purposes as of October 1, 2007 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and [redacted] company (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "Additional Services Fee" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.2 "Affiliate" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.3 "Agreement" means this Phase V Pendleton Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.4 "Alternate" shall have the meaning set forth in Section 9.3.2 hereof.

1.5 "Applicable Laws" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the applicable Sites and/or the Work.

1.6 "Application for Payment" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.7 "Architect" mean[redacted]

1.8 "Authorized Representatives" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.9 "Certificate of Substantial Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.10 "Certificate of Final Completion" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.11 "Change Directive" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.12 "Change Order" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.13 "Change Proposal" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.14 "Civil Engineer" mean

1.15 "Claims" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.16 "Company" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.17 "Company Event of Default" shall have the meaning set forth in Section 12.3 hereof.

1.18 "Company Indemnified Parties" means the Company, its members, agents, partners and employees.

1.19 "Construction Agreement" means that certain Phase V Pendleton Construction Agreement between the Contractor and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.21 "Construction Consultant" means its successors and assigns.

1.22 "**Construction Documents**" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Plans and Specifications must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.23 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that a Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.24 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.25 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.26 "**Contract Documents**" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.27 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.28 "**Contractor**" means th

1.29 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.30 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D.

1.31 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.32 "**Credit Provider**" shall have the meaning as set forth in the Operating Agreement.

1.33 **"D/B Submission"** shall have the meaning set forth in Exhibit F attached hereto.

1.34 **"Day" or "Days"** means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. **"Business Day"** or **"Business Days"** means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of California are open for business.

1.35 **"Design/Builder"** mean

1.36 **"Design/Builder Event of Default"** shall have the meaning set forth in Section 12.1 hereof.

1.37 **"Design/Builder Indemnified Parties"** means the Design/Builder, the Contractor and the Architect, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.38 **"Design/Builder Initiated Change Orders"** shall have the meaning set forth in Section 5.1.4 hereof.

1.39 **"Design Group"** means all architects and engineers having a contract with the Design/Builder or Architect to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.40 **"Design Materials"** means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.41 **"Design Phase"** means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.42 **"Design Work"** means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.43 "DoN" means the United States of America, Department of the Navy.

1.44 **"Effective Date"** shall have the meaning set forth in the first paragraph of this Agreement.

1.45 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.46 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.47 **"Facility Engineering and Acquisition Division" or "FEAD"** shall have the meaning set forth in Section 2.16.1 hereof.

1.48 "**Fee**" means the

1.49 **"Final Completion" or "Finally Complete"** means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.50 "**First Mortgage Loan Documents**" shall have the meaning as set forth in the Operating Agreement.

1.51 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.53 "**Governmental Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.54 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or

ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.55

1.56 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.57 "**Landscaping Work**" shall mean the landscaping provided for new units as more fully described in Exhibit A.

1.58 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4 hereof.

1.59 "**Managing Member**" means which is the managing member of the Company.

1.60 "**Mobilization Plan**" shall have the meaning set forth in Section 2.11 hereof.

1.61 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.62 "**Notice to Begin Design**" means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.63 **"Operating Agreement"** means that certain Third Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2007.

1.64 **"Option 1"** shall have the meaning set forth in Section 2.1 hereof.

1.65 **"Option 2"** shall have the meaning set forth in Section 2.1 hereof.

1.66 **"OSHA"** shall have the meaning set forth in Section 10.2.2 hereof.

1.67 **"Overhead"** means

1.68 **"Party" or "Parties"** means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.69 **"Payment and Performance Bonds"** means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor, as required under the Construction Agreement.

1.70 **"Phase V Offer"** shall have the meaning as set forth in the Operating Agreement.

1.71 **"Phase V IFP"** shall have the meaning as set forth in the Operating Agreement.

1.72 **"Phase(s)"** means the construction phase(s) of the Project described in Exhibit G, as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Construction Agreement, if any, are initially included as alternates under the Construction Agreement and will be incorporated into the Construction Agreement by Change Order prior to the commencement of each such Phase.

1.73 **"Product Data"** shall have the meaning set forth in Section 2.15.2.2 hereof.

1.74 **"Project"** means the facilities located on the Sites, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.75 **"Punch list"** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.76 **"Retainage"** means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.77 **"Samples"** shall have the meaning set forth in Section 2.15.2.3 hereof.

1.78 **"San Luis Rey Site"** means the property identified on Exhibit I-1 attached hereto.

1.79 **"San Mateo Point Site"** means the property identified on Exhibit I-2 attached hereto.

1.81 **"Schedule"** means the schedule attached hereto as Exhibit H, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.82 **"Scheduled Date of Substantial Completion"** means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.83 **"Scope of Work Submittal Documents"** means the drawings, specifications and other documents prepared for the Design/Builder by the Architect (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Scope of Work Submittal Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project, and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.84 **"Self-Performed Work"** shall have the meaning set forth in Section 8.3 hereof.

1.85 **"Separate Contractors"** means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.86 **"Shop Drawings"** shall have the meaning set forth in Section 2.15.2.1 hereof.

1.87 **"Sites"** means the San Luis Rey Site and [redacted] the San Mateo Point Site (each of which may be referred to herein individually as a **"Site"**), as more fully described on Exhibit I-1 and Exhibit I-2 hereto, and any other real property on which the Work will be performed.

1.88 "**Subcontract**" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.89 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.90 "**Substantial Completion" or "Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.91 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.92 "**Team Subcontract**" means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.93 "**Team Subcontractors**" means the Contractor and the Architect.

1.94 "**Trustee**" shall have the meaning set forth in the Operating Agreement.

1.95 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.96 "**Work" or "Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work, and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

2.1.1 The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform

the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the Scheduled Date(s) of Substantial Completion, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.1.2

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Sites; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Contract Documents listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Sites (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify

the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

2.4.3 Below Grade Utilities. The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Phase V IFP (as it relates to the Work), the Contract Documents listed on Exhibit C, or known as of the Effective Date by the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A). Any other Hazardous Materials besides the ones specifically identified in this Section 2.4.2 are not included in the Scope of Work.

2.5 Scope of Work Submittal Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibit H and Exhibit J hereto, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H.

2.6 Legal Requirements.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting t Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within [redacted] Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on

schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Phase V Offer and the general intent of the Phase V IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase V Offer and the general intent of the Phase V IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of

warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion such building of group of buildings. If withi after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of hall be extended with respect to portions of the Work first performed after Substantial Completion of such building to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work and/or Landscaping Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upor Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the

Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder or the Contractor, as appropriate)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance, If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Sites portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work or Landscaping Work, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule and shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Sites at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Sites.

The Design/Builder shall prepare a mobilization plan, prior to the start of a Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Sites to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Sites with materials or equipment. The Design/Builder shall at all times confine its access and use of the Sites to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Sites, or relevant portions thereof, at certain times, and to the extent that any or all of the Sites are not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in [redacted]chedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

[redacted] The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Sites and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of

such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Sites, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Sites in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Sites. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Sites one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Sites approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCB Pendleton (to the attention of Base Commander), Headquarters Marine Corps (to the attention of Military Housing Office ("MHO")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MCB Pendleton and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed .

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "Samples" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Facility Engineering and Acquisition Division (**"FEAD"**) timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and FEAD may observe such procedures. A

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule nd shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs

shall be borne solely by the Design/Builder or the Contractor, as appropriate).

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Sites, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens within [redacted] Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such [redacted] Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule [redacted] the costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company [redacted] An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without

change to the Schedule c nd the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder or the Contractor, as appropriate).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the

Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule [redacted] n accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Sites by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Sites. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents.

The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Sites by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architects' agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or

failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion Dates for each building. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within [redacted] Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the Scheduled Date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for a Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available any or all of the Sites in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, approvals and authorizations from federal, state, or local governments or quasi-governmental agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Sites not brought to the Sites by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than [redacted] Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes

that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay,

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages in an amount

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (including the United States Member) have agreed upon the schedule of values shown in Exhibit E, which sets forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the ay of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later tha Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of r (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on each Phase shall be withheld until the Phase is complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, less of the value of any uncompleted Work or Punch list items relating to such buildings. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Sites for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Sites, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule shall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 Substantial Completion.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than [redacted] Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue

shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Sites and all required taxes, less applicable trade discounts; and

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Sites during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Sites.

The Design/Builder shall maintain at the Sites for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder

for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in the First Mortgage Loan Documents. Notwithstanding the foregoing: (1) reduction in the line item amount for Landscape Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Schedule. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in

such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedule such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A, t

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Project is delayed beyond January 1, 2008, for any reason other than the fault of the Design/Builder

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

The Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of the entire Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with each Architect pursuant to which the Design/Builder shall delegate all design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-**

Performed Work"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess of The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work on either Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees, Prior to the commencement of the Work on any alternate under the Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment Bond and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment Bond and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees, and shall be in the forms set forth on Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Sites under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Sites or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations

of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Sites who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or any Site to be loaded so as to endanger anyone's safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Sites and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure each Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Sites.

The Design/Builder shall be responsible for any and all damage to property at the Sites except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during suc Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the

Site(s) and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute. During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, afte Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Sites and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a **"Company Event of Default"**:

12.3.1 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of [redacted] Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of [redacted] Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or

acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within [redacted] days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to th[redacted] Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

#400583812

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where

reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Phase V Pendleton Design/Builder's Consent Agreement dated as of the Effective Date executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of _____ years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees,

officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until [redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged

communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

[Signature Page to Phase V Pendleton Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Pages]

[Signature Page to Phase V Pendleton Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Appendix E-1	-	Breakdown of Site Investigation and Discovery
Exhibit F	-	Governmental Approvals
Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I-1	-	San Luis Rey Site Description
Exhibit I-2	-	San Mateo Point Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination
Exhibit Q-1	-	
Exhibit Q-2	-	
Exhibit R-1	-	
Exhibit R-2	-	
Exhibit R-3	-	
Exhibit R-4	-	
Exhibit S	-	Schedule for (

EXHIBIT A

SCOPE OF WORK

[ATTACHED]

#400632613

#400632613

#40063261.3

#400632613

G-6-120

A-53

G-6-130

G-6-157

G-6-165

A-115

A-116

A-117

A-118

A-119

A-120

A-121

A-122

A-124

A-125

A-126

A-127

EXHIBIT B

CONSTRUCTION ALLOWANCE ITEMS

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

1. Finding of No Significant Impact (FONSI) for the construction of family housing at Marine Corps base, Camp Pendleton, California; January 24, 1997.

2. Base Exterior Architecture Plan (BEAP) 1995, prepared by Estrada Land Planning and Jack Mosher Architects in accordance with Contract No. N68711-91-D-2050 for the Department of the Navy Southwest Division Naval Facilities Engineering Command, Officer In Charge of Construction for Camp Pendleton California

3. Final Environmental Condition of Property, Public Private Venture Phase V – San Mateo Point and San Luis Rey Military Family Housing at Marine Corps Base Camp Pendleton, San Diego, California: dated July 20, 2007, prepared by CDM Federal Programs Corporation for The Department of the Navy under Contract Number: N68711-04-D-1110, Delivery Order Number: 0010, DCN: JNS-1110-0010-0081

4. Final Phase I Environmental Site Assessment; Proposed Housing Construction Sites, San Mateo Point and San Luis Rey, MCB Camp Pendleton, California dated September 10, 2007, Prepared by Apex Companies, LLC for Camp Pendleton & Quantico Housing, LLC.

5. General Decision Number: CA20070001 02/23/2007 Mod-2 dated 2/23/07

6. Soils Report with Boring Logs dated September 7, 2007

7. SWPPP Storm Water Pollution Prevention Plan to be finalized post-closing

8. Construction Plans and Specifications for Phase V

   - Phase V Camp Pendleton & Quantico Housing, LLC
     San Luis Rey
     SITE WORK
     Closing Set – 30 August 2007
     Plans by [redacted]

   - Phase V Camp Pendleton & Quantico Housing, LLC
     San Mateo Point
     SITE WORK
     Closing Set – 30 August 2007
     Plans by [redacted]

- Phase V Camp Pendleton & Quantico Housing, LLC
  San Mateo Point
  San Mateo Point Clubhouse
  Closing Set – 30 August 2007
  Plans by S

- Phase V Camp Pendleton & Quantico Housing, LLC
  ARCHITECTURE
  Closing Set – 30 August 2007
  Plans .

EXHIBIT D

COST OF THE WORK

Exh. D-2

Exh. D-3

Exh. D-4

EXHIBIT F

COMPANY GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible:

Department of the Navy:

1. Prior to the commencement of construction, a demolition Plan will be submitted to and approved by the DoN.

2. Obtain written approval by the DoN on final design Plans and Specifications will be submitted in accordance with Exhibit J of this Agreement.

3. Obtain any required Depredation Permits for trees, migratory birds, etc.

4. Provide all approvals and oversight, if necessary, to ensure that the Scope of Work as submitted by the Design/Builder satisfies all natural and cultural resources requirements as outlined in the Company documents.

San Diego Air Pollution Control District:

5. The Company is required to notify the San Diego Air Pollution Control District (**"SDAPCD"**) of any and all construction related activity including, but not limited to, demolition, site work, vertical construction and public/private infrastructure construction.

Third Party Plan Review:

6. The Company shall obtain a third party to review the Plans and Specifications for approval.

Utilities:

7. The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging PWC utilities.

Group Approvals:

8. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

9. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Sites, such approvals shall be the responsibility of the Company.

The term "**D/B Submission**" shall mean any of the items described in paragraphs 1, 3 and 4 above, or any component thereof.

EXHIBIT G

PROJECT PHASES

EXHIBIT H

SCHEDULE

[SEE ATTACHED CHARTS]

EXHIBIT I-1

SAN LUIS REY SITE DESCRIPTION

All of that certain parcel of land situated in the County of San Diego, State of California, being a portion of Rancho Santa Margarita Y Las Flores as shown on Record of Survey Map No. 794 filed January 17, 1940, in the Office of the County Recorder of San Diego County, and a portion of Rancho Mission Viejo as shown on that Record of Survey recorded in Book 12, Page 5 of Records of Survey in the Office of the County Recorder of Orange County, State of California, all of which is located within Marine Corps Air Station Camp Pendleton, being more particularly described as follows:

COMMENCING at Marine Corps Air Station Camp Pendleton horizontal control station "Carp" shown as a concrete monument with a 2" brass disk stamped "USN 1956 Carp El. 114.65' " on Record of Survey Map No. 10858, filed in the Office of the County Recorder of San Diego County, for the purpose of this legal description, Control Point "Carp" has a grid coordinate value of Northing 2065176.027 feet, Easting 6234684.396 feet, said station "Carp" bears North 82°23'41" West a distance of 9294.74 feet (Record South 82°17'20" East a distance of 9283.09 feet) from a horizontal control station "Bushy" shown as a concrete monument with a 3" steel disk stamped "11TH MARINES JAMIE 1979" on said Record of Survey Map No. 10858.

San Luis Rey Site 1:

Commencing at said station "Carp", thence South 29°52'08" East 15,625.98 feet to the Southerly terminus of the course in the Easterly boundary of "Parcel 9" shown as "South 02°03'48" West 274.08 feet " on Record of Survey Map No. 18324 recorded June 25, 2004 as File No. 2004-0596638 in the Office of the County Recorder of San Diego County, state of California, said point of terminus being the **TRUE POINT OF BEGINNING**: thence Northerly along the Easterly boundary of "Parcel 9" as shown on said Record of Survey No. 18324, North 02°03'28" East 274.08 feet to a point in a non-tangent 171.66 foot radius curve concave Southwesterly, to which a radial line bears, North 73°11'48" East;
thence Northwesterly along the arc of said curve through a central angle of 18°00'40" a distance of 53.96 feet; thence leaving said "Parcel 9", non-tangent to said curve, North 02°02'35" East 63.66 feet; thence South 87°22'07" East 199.88 feet; thence South 19°22'38" East 390.06 feet; thence South 33°11'56" East 88.97 feet; thence South 16°58'25" East 84.12 feet; thence South 14°55'32" East 183.37 feet; thence South 41°18'38" West 83.27 feet; thence

South 88°05'00" West 183.54 feet to the Easterly boundary of said "Parcel 9"; thence along said Easterly boundary the following four (4) courses:

1) North 00°51'54" East 82.46 feet;
2) South 88°43'53" West 203.69 feet;
3) North 15°41'12" East 301.27 feet;

4) North 73°04'39" West 82.53 feet to the **TRUE POINT OF BEGINNING.**

Containing 5.101 acres, more or less.

San Luis Rey Site 2:

Commencing at said station "Carp"; thence South 28°14'21" East 15,705.97 feet to the Easterly terminus of the Southwesterly line shown as "North 79°01'52" West 213.77 feet" in the "Navy Public Private Venture Lease Parcel" on Record of Survey Map No. 19693 recorded April 27, 2007 as File No. 2007-0287200 in the Office of the County Recorder of San Diego County, State of California, being the **TRUE POINT OF BEGINNING;** thence Westerly along said "Navy Public Private Venture Lease Parcel", North 79°02'12" West 213.77 feet to the Southwesterly corner of said "Navy Public Private Venture Lease Parcel"; thence continuing along the Westerly prolongation of said "Southwesterly line" of said Record of Survey 19693, North 79°02'12" West 56.00 feet; thence North 22°47'31" West 139.86 feet; thence North 28°04'25" West 300.57 feet; thence South 51°39'49" West 84.46 feet; thence South 25°24'33" West 21.24 feet; thence South 66°58'05" West 46.45 feet; thence South 56°01'34" West 216.15 feet; thence South 02°38'23" East 107.05 feet; thence North 61°44'57" West 52.66 feet; thence South 56°08'57" West 288.68 feet; thence South 37°52'56" West 77.28 feet; thence South 60°52'47" West 156.21 feet; thence North 32°48'18" West 121.19 feet; thence South 44°40'05" West 177.55 feet; thence South 34°27'18" East 78.96 feet; thence South 28°16'30" West 123.12 feet; thence South 09°32'01" West 148.32 feet; thence North 84°52'57" West 80.43 feet; thence North 47°52'20" West 136.94 feet; thence South 72°35'02" West 24.83 feet; thence South 00°23'17" East 66.14 feet; thence South 14°27'33" West 98.57 feet; thence South 47°35'43" West 188.73 feet; thence South 48°52'12" West 178.86 feet; thence South 72°41'04" West 83.05 feet; thence South 45°33'14" West 56.46 feet; thence South 01°06'04" East 107.73 feet; thence South 11°31'19" East 112.92 feet; thence South 47°36'00" East 101.82 feet to the Northeasterly boundary of "Parcel 1" as shown on said Record of Survey Map No. 18324; thence along said "Parcel 1", North 87°36'45" East 44.54 feet; thence leaving said "Parcel 1", North 40°42'48" East 169.89 feet; thence North 04°56'51" West 49.26 feet; thence North 39°30'10" East 112.46 feet; thence North 44°04'38" East 114.45 feet; thence North 48°41'26" East 163.36 feet; thence North 55°23'12" East 84.67 feet; thence North 86°47'25" East 31.97 feet; thence North 88°32'58" East 25.00 feet to the beginning of a tangent 350.00 foot radius curve concave Southerly; thence Easterly along the arc of said curve through a central angle of 13°05'24" a distance of 79.96 feet; thence South 78°21'39" East 10.00 feet; thence South 78°41'23" East 16.45 feet; thence South 75°50'41" East 3.00 feet to the beginning of a tangent 362.00 foot radius curve concave Southwesterly; thence Southeasterly along the arc of said curve through a central angle of 12°00'09" a distance of 75.83 feet; thence South 63°50'32" East 19.50 feet; thence South 50°11'05" East 99.10 feet; thence South 02°45'35" East 41.33 feet; thence North 42°01'13" East 135.31 feet; thence North 41°40'32" East 175.82 feet to the beginning of a tangent 825.00 foot radius curve concave Southeasterly; thence Northeasterly along the

arc of said curve through a central angle of 12°38'49" a distance of 182.10 feet; thence North 54°19'21" East 54.00 feet; thence North 60°28'44" East 165.92 feet; thence North 66°25'14" East 49.70 feet; thence North 64°48'02" East 144.15 feet; thence North 62°05'46" East 132.53 feet; thence North 59°54'32" East 60.33 feet; thence North 59°00'09" East 256.32 feet; thence North 61°36'33" East 59.95 feet to the **TRUE POINT OF BEGINNING.**

Containing 20.710 acres, more or less.

San Luis Rey Site 3

Commencing at said station "Carp"; thence South 20°23'11" East 16,406.29 feet to the Southeasterly corner of "Parcel 1" as shown on said Record of Survey Map No. 18324, being the **TRUE POINT OF BEGINNING;** thence along the boundary of said "Parcel 1" the following four (4) courses:

1) North 84°08'14" West 29.22 feet;
2) North 63°17'04" West 254.48 feet;
3) South 73°14'00" West 264.41 feet;
4) North 76°53'52" West 188.83 feet to the Southwesterly corner of said "Parcel 1";

thence continuing along a portion of the Westerly boundary of said "Parcel 1", North 09°35'15" West 41.63 feet; thence leaving said "Parcel 1", South 71°07'03" West 71.00 feet; thence South 25°14'48" West 157.71 feet; thence South 33°12'17" East 204.77 feet; thence South 76°50'15" East 75.10 feet; thence North 80°22'53" East 163.77 feet; thence South 29°39'57" East 125.26 feet; thence South 75°04'28" East 85.84 feet; thence North 80°17'53" East 109.15 feet; thence North 37°04'21" East 165.91 feet; thence North 84°24'37" East 86.31 feet; thence North 15°58'31" East 180.47 feet to the **TRUE POINT OF BEGINNING.**

Containing 5.568 acres, more or less.

San Luis Rey Site 4

Commencing at said station "Carp"; thence South 19°45'43" East 16,712.37 feet to the Northeasterly corner of "Parcel 3" of said Record of Survey Map No. 18324, being the **TRUE POINT OF BEGINNING**; thence along said "Parcel 3" the following five (5) courses:

1) South 40°33'22" West 33.07 feet;
2) South 06°05'17" West 182.51 feet;
3) North 85°01'34" West 33.21 feet to the beginning of a non-tangent 31.29 foot radius curve concave Southeasterly, to which a radial line bears, North 05°14'04" West;

4) thence Southwesterly along the arc of said curve through a central angle of 98°12'11" a distance of 53.63 feet to the beginning of a non-tangent 28.74 foot radius curve concave Northeasterly, to which a radial line bears, North 89°56'05" West;
5) thence Southeasterly along the arc of said curve through a central angle of 102°56'56" a distance of 51.64 feet to a point of cusp;

thence leaving said "Parcel 3", non-tangent to said curve South 46°48'26" West 68.18 feet; thence South 51°06'39" West 5.00 feet to the point of cusp of a tangent 22.11 foot radius curve concave Westerly, to which a radial line bears, South 38°53'21" East, said point of cusp being a point in the Southerly boundary of "Parcel 2" as shown on said Record of Survey No. 18324; thence along said "Parcel 2" the following five (5) courses:

1) Northerly through a central angle of 87°49'21" a distance of 33.89 feet;
2) thence non-tangent to said curve North 14°28'15" West 78.11 feet;
3) North 52°25'53" West 31.76 feet;
4) North 86°17'29" West 69.57 feet;
5) North 57°29'07" West 46.19 feet to the most Northerly corner of said "Parcel 2";

thence Southwesterly along a portion of said "Parcel 2", South 76°09'53" West 16.71 feet; thence leaving said "Parcel 2", North 02°03'16" East 78.31 feet; thence North 46°50'06" East 80.55 feet; thence North 71°32'27" East 234.72 feet; thence South 01°48'50" East 38.45 feet to the **TRUE POINT OF BEGINNING.**

Containing 1.137 acres, more or less.

EXHIBIT I-2

SAN MATEO POINT SITE DESCRIPTION

Parcel 2:

Being a portion of the East Half of Section 15, Township 9 South, Range 7 West, San Bernardino Meridian, County of San Diego, State of California.

That certain Parcel of Land situated in said County of San Diego also being a portion of Rancho Santa Margarita y Las Flores as shown on Record of Survey No. 794, filed January 17, 1940 in the Office of the County Recorder of said San Diego County and a portion of Rancho Mission Viejo as shown on Record of Survey recorded in Book 12, Page 5, of Records of Survey in the Office of the County Recorder of Orange County, State of California, all of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

Beginning at the hereinabove described Point 'A'; thence along the Southeasterly line of said San Mateo Point Real Estate Ground Lease the following courses: South 25°09'59" West 41.05 feet to the beginning of a non-tangent 74.24 foot radius curve concave Northwesterly, to which a radial line bears, South 59°14'49" East; thence Southwesterly along the arc of said curve through a central angle of 37°29'38" a distance of 48.58 feet; thence South 57°21'57" West 19.52 feet; thence South 83°58'18" West 8.46 feet; thence South 45°24'33" West 9.80 feet; thence South 08°34'26" West 12.37 feet; thence South 41°01'46" East 8.06 feet to the point of cusp of a non-tangent 191.97 foot radius curve concave Northwesterly, to which a radial line bears, South 81°54'54" East; thence Southwesterly along the arc of said curve through a central angle of 23°35'00" a distance of 79.02 feet; thence non-tangent to said curve South 32°48'23" West 30.45 feet to the beginning of a non-tangent 206.48 foot radius curve concave Northwesterly, to which a radial line bears, South 54°20'58" East; thence Southwesterly along the arc of said curve through a central angle of 16°34'06" a distance of 59.71 feet to the beginning of a non-tangent 947.49 foot radius curve concave Northwesterly, to which a radial line bears, South 40°00'20" East; thence Southwesterly along the arc of said curve through a central angle of 03°33'29" a distance of 58.84 feet; thence South 55°31'28" West 30.34 feet to the beginning of a non-tangent 574.92 foot radius curve concave Northwesterly, to which a radial line bears, South 47°45'44" East; thence Southwesterly along the arc of said curve through a central angle of 07°54'08" a distance of 79.29 feet; thence South 07°30'23" West 59.57 feet; thence South 25°02'59" West 68.15 feet to Point 'B'; thence leaving said Southeasterly line North 47°20'34" West 502.13 feet to the Northwesterly line of said San Mateo Point Real Estate Ground Lease; thence along said Northwesterly line North 13°12'37" East 701.49 feet; thence leaving said Northwesterly line South 75°34'05" East 38.62 feet; thence North 68°20'56" East 42.31 feet; thence South 50°39'02" East 55.99 feet; thence South 39°49'18" East 131.96 feet; thence South 20°26'31" West 38.59 feet; thence South 28°27'39" East 79.42 feet; thence South 36°47'52" East 37.13 feet; thence South 41°04'13" West 23.54 feet; thence South

08°09'35" West 78.95 feet; thence South 55°20'47" East 120.56 feet; thence North 39°28'29" East 16.68 feet; thence South 58°01'18" East 243.25 feet to the **POINT OF BEGINNING.**

Containing 8.324 acres, more or less.

Parcel 3:

Being a portion of the East Half of Section 15, Township 9 South, Range 7 West, San Bernardino Meridian, County of San Diego, State of California.

That certain Parcel of Land situated in said County of San Diego also being a portion of Rancho Santa Margarita y Las Flores as shown on Record of Survey No. 794, filed January 17, 1940 in the Office of the County Recorder of said San Diego County and a portion of Rancho Mission Viejo as shown on Record of Survey recorded in Book 12, Page 5, of Records of Survey in the Office of the County Recorder of Orange County, State of California, all of which is located within Marine Corps Air Station Camp Pendleton, described as follows:

Beginning at the hereinabove described Point 'B'; thence along the Southeasterly, Southwesterly and Northwesterly lines of said San Mateo Point Real Estate Ground Lease the following courses: South 29°46'21" West 100.17 feet to the beginning of a non-tangent 129.88 foot radius curve concave Northwesterly, to which a radial line bears, South 56°32'00" East; thence Southwesterly along the arc of said curve through a central angle of 29°51'26" a distance of 67.68 feet; thence South 67°03'21" West 68.80 feet; thence South 63°53'12" West 89.19 feet to the beginning of a non-tangent 131.42 foot radius curve concave Southeasterly, to which a radial line bears, North 25°57'49" West; thence Southwesterly along the arc of said curve through a central angle of 17°13'42" a distance of 39.52 feet; thence South 46°20'35" West 29.25 feet to the beginning of a non-tangent 381.37 foot radius curve concave Southeasterly, to which a radial line bears, North 44°06'11" West; thence Southwesterly along the arc of said curve through a central angle of 08°56'39" a distance of 59.53 feet; thence South 20°22'22" West 20.00 feet to the beginning of a non-tangent 381.41 foot radius curve concave Northwesterly, to which a radial line bears, South 60°45'26" East; thence Southwesterly along the arc of said curve through a central angle of 12°34'05" a distance of 83.67 feet; thence South 43°58'13" West 49.02 feet; thence North 72°37'41" West 17.49 feet; thence North 58°00'15" West 23.00 feet; thence North 47°08'22" West 46.94 feet to the beginning of a non-tangent 120.87 foot radius curve concave Northeasterly, to which a radial line bears, South 51°51'34" West; thence Northwesterly along the arc of said curve through a central angle of 25°39'51" a distance of 54.14 feet to a point of cusp; thence non-tangent to said curve North 00°19'07" East 10.45 feet; thence North 13°12'37" East 655.85 feet; thence leaving said Northwesterly line South 47°20'34" East 502.13 feet to the **POINT OF BEGINNING.**

Containing 4.267 acres, more or less.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval withir [redacted])ays of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within th [redacted] lay review time, then afte [redacted] Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work:

[DESIGN SUMMARY ATTACHED]

EXHIBIT K

AUTHORIZED REPRESENTATIVES

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted]. Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

Exh. L-2

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a written notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

DESIGN GROUP MEMBERS

Exh. M-2

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[SEE ATTACHED]

EXHIBIT N-2

CO-OBLIGEE RIDER

EXHIBIT O

Exh. O-2

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision (attached hereto as Appendix P-1), and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types

described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

[SEE ATTACHED]

General Decision Number: CA20070001 02/23/2007

Superseded General Decision Number: CA20030001

State: California

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/09/2007
1	02/16/2007
2	02/23/2007

ASBE0005-002 08/07/2006

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems)	$ 36.16	10.24

ASBE0005-004 08/07/2006

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)	$ 19.55	6.38

BOIL0092-003 01/01/2006

	Rates	Fringes
Boilermaker	$ 33.19	18.11

BRCA0004-008 11/01/2006

	Rates	Fringes
Bricklayer; Marble Setter	$ 29.50	10.70

BRCA0018-004 06/01/2006

	Rates	Fringes
Marble Finisher	$ 22.52	7.65
Tile Finisher	$ 18.57	7.25
Tile Layer	$ 29.30	11.36

BRCA0018-010 09/01/2006

	Rates	Fringes
Terrazzo Finisher	$ 24.54	8.62
Terrazzo Worker	$ 31.63	9.41

CARP0409-002 07/01/2005

	Rates	Fringes
Diver		
(1) Wet	$ 557.44	8.47
(2) Standby	$ 278.72	8.47
(3) Tender	$ 270.72	8.47

Amounts in "Rates' column are per day

CARP0409-008 07/01/2003

	Rates	Fringes
Modular Furniture Installer		
(1) Mobile Filing System Installer	$ 13.76	5.80
(2) Modular Furniture Installer	$ 14.36	5.80
(3) Full Wall Technician	$ 20.47	5.80

CARP0547-001 07/01/2006

	Rates	Fringes
Carpenters:		
(1) Bridge	$ 33.54	8.82
(2) Commercial Building	$ 29.36	8.82
(3) Heavy & Highway	$ 33.41	8.82
(4) Residential / Light Commercial	$ 23.49	8.82
Millwright	$ 33.91	8.82
Piledriver	$ 33.54	8.82

CARP0547-002 07/01/2006

	Rates	Fringes
Drywall		
(1) Work on wood framed construction of single family residences, apartments or condominiums under four stories		
Drywall Installer/Lather	$ 21.00	7.57
Drywall Stocker/Scrapper	$ 11.00	5.06
(2) All other work		
Drywall Installer / Lather	$ 25.61	7.57
Drywall Stocker/Scrapper	$ 11.00	5.06

ELEC0569-001 12/01/2006

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer	$ 37.35	3%+11.08
Electrician	$ 36.51	3%+11.08
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer	$ 33.20	3%+11.08
Electrician	$ 32.45	3%+11.08

ELEC0569-005 12/01/2005

	Rates	Fringes
Sound & Communications		
Sound Technician	$ 21.65	3%+9.08
Soundman	$ 16.24	3%+7.51

SOUND TECHNICIAN: Terminating, operating and performing final check-out

SOUNDMAN: Wire-pulling, splicing, assembling and installing devices

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

ELEC0569-006 12/01/2005

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
Traffic signal, street light and underground work		
Utility Technician #1	$ 18.15	3%+7.17
Utility Technician #2	$ 16.50	3%+7.17

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

ELEC0569-008 12/01/2005

	Rates	Fringes
Electrician (Residential, 1-3 Stories)	$ 21.00	3%+2.55

ELEC1245-001 06/01/2006

	Rates	Fringes
Line Construction		
(1) Lineman; Cable splicer	$ 38.88	11.70
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), and overhead and underground distribution line equipment)	$ 32.12	10.71
(3) Groundman	$ 24.56	10.49
(4) Powderman	$ 35.90	10.83

ELEV0018-001 01/01/2005

	Rates	Fringes
Elevator Mechanic.....	$ 38.215	12.015

FOOTNOTE:
Vacation Pay: 8% with 5 or more years of service, 6% for 6 months to 5 years service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

	Rates	Fringes
Power Equipment Operators (Cranes, Piledriving & Hoisting)		
GROUP 1	$ 33.00	15.30
GROUP 2	$ 33.78	15.30
GROUP 3	$ 34.07	15.30
GROUP 4	$ 34.21	15.30
GROUP 5	$ 34.43	15.30
GROUP 6	$ 34.54	15.30
GROUP 7	$ 34.66	15.30
GROUP 8	$ 34.83	15.30
GROUP 9	$ 35.00	15.30
GROUP 10	$ 36.00	15.30
GROUP 11	$ 37.00	15.30
GROUP 12	$ 38.00	15.30
GROUP 13	$ 39.00	15.30
Power Equipment Operators (Tunnel Work)		
GROUP 1	$ 33.50	15.30
GROUP 2	$ 34.28	15.30
GROUP 3	$ 34.57	15.30
GROUP 4	$ 34.71	15.30
GROUP 5	$ 34.93	15.30
GROUP 6	$ 35.04	15.30
GROUP 7	$ 35.16	15.30
Power Equipment Operators		
GROUP 1	$ 31.65	15.30
GROUP 2	$ 32.43	15.30
GROUP 3	$ 32.72	15.30
GROUP 4	$ 34.21	15.30
GROUP 5	$ 35.31	15.30
GROUP 6	$ 34.43	15.30
GROUP 7	$ 35.53	15.30
GROUP 8	$ 34.54	15.30
GROUP 9	$ 35.64	15.30
GROUP 10	$ 34.66	15.30
GROUP 11	$ 35.76	15.30
GROUP 12	$ 34.83	15.30
GROUP 13	$ 34.93	15.30
GROUP 14	$ 34.96	15.30
GROUP 15	$ 35.04	15.30
GROUP 16	$ 35.16	15.30
GROUP 17	$ 35.33	15.30
GROUP 18	$ 35.43	15.30
GROUP 19	$ 35.54	15.30
GROUP 20	$ 35.66	15.30
GROUP 21	$ 35.83	15.30
GROUP 22	$ 35.93	15.30
GROUP 23	$ 36.04	15.30
GROUP 24	$ 36.16	15.30
GROUP 25	$ 36.33	15.30

FOOTNOTES:

PREMIUM PAY of $3.75 per hour shall be paid on all power equipment operator work at Camp Pendleton, Point Arguello, and Vandenburg AFB.

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine oeprator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (side steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete

joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck);

Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator

operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator,

operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline,

clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck);

Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGI0012-004 08/01/2006

	Rates	Fringes
Power equipment operators: (DREDGING)		
(1) Leverman	$ 39.65	15.30
(2) Dredge dozer	$ 35.18	15.30
(3) Deckmate	$ 35.07	15.30
(4) Winch operator (stern winch on dredge)	$ 34.52	15.30
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand	$ 33.98	15.30
(6) Barge Mate	$ 34.59	15.30

IRON0002-004 07/01/2006

	Rates	Fringes
Ironworkers:		
Fence Erector	$ 32.165	16.585
Ornamental, Reinforcing and Structural	$ 33.055	16.585

PREMIUM PAY:

$3.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$2.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$1.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

	Rates	Fringes
Laborers (RESIDENTIAL CONSTRUCTION - See definition below)		
(1) Laborer	$ 21.30	9.88
(2) Cleanup, Landscaping, Fencing (chain link or wood)	$ 20.11	9.88
Laborers: (BUILDING and all other Residential Construction)		
Group 1	$ 23.38	11.29
Group 2	$ 24.01	11.29
Group 3	$ 24.66	11.29
Group 4	$ 26.13	11.29
Group 5	$ 26.53	11.29

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filing
of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demoliton); Guinea chaser; Headboard man-asphlt; Laborer,

packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riiprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including
drilling of same); Hydro seeder and similar type; Impact wrench, mult-plate; Kettlemen, potmen and mean applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying
means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air blasting, come-along, and similar mechanicl tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and inclduing rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scaarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, apshalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of oepration, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the
conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all pwder and explosives of whatever type, regardless of method used for such loading and placing; Driller-
all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of

motive power.

LABO0089-002 11/01/2006

	Rates	Fringes
Mason Tender.....	$ 23.75	11,09

LABO0089-004 07/01/2006

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
GROUP 1	$ 22.90	11.29
GROUP 2	$ 23.36	11.29
GROUP 3	$ 23.77	11.29
GROUP 4	$ 24.61	11.29
GROUP 5	$ 25.73	11.29
GROUP 6	$ 27.36	11.29

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber,Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/'2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-klold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket jlints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree

climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer - Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter,Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work. High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting,m makeing of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prfefabricated Manhole Installer, Sandblast Nozzleman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

GROUP 6: Horizontal Direction Drill Locator

LABO0300-008 08/02/2006

	Rates	Fringes
Plaster Clean-up Laborer.....	$ 23.15	12.95
Plasterer tender.....	$ 25.70	12.95

Work at Military Bases - $3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, George AFB, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

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* **LABO0882-001** 01/01/2007

	Rates	Fringes
Asbestos Removal Laborer.....	$ 24.15	11.75

SCOPE OF WORK: includes site mobilization, initial site clean-up, site preparation, removal of asbestos-containing material and toxic waste (including lead abatement and any other toxic materials), encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste (including lead abatement and any other toxic materials) by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers, and assembly of decontamination stations.

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	$ 23.74	8.51
(2) Vehicle Operator/Hauler.	$ 23.91	8.51
(3) Horizontal Directional Drill Operator.....	$ 25.76	8.51
(4) Electronic Tracking Locator.....	$ 27.76	8.51
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	$ 24.52	11.34
GROUP 2.....	$ 25.82	11.34
GROUP 3.....	$ 27.83	11.34
GROUP 4.....	$ 29.57	11.34

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-001 01/01/2007

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Repaint	$ 24.40	7.65
(2) All Other Work	$ 27.67	7.65

REPAINT of any structure with the exception of work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities, tenant improvement work not included in conjunction with the construction of the building and all repainting of tenant improvement projects.

PAIN0036-010 10/01/2005

	Rates	Fringes
Drywall Finisher		
(1) Building & Heavy Construction	$ 21.35	8.83
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories)	$ 18.00	5.76

PAIN0036-012 12/01/2005

	Rates	Fringes
Glazier	$ 30.00	10.67

PAIN0036-019 02/01/2007

	Rates	Fringes
Soft Floor Layer	$ 22.67	10.00

PLAS0200-005 01/01/2005

	Rates	Fringes
Plasterer	$ 24.03	7.12

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS BASE, IMPERIAL BEACH NAVAL AIR STATION: $3.00 additional per hour.

PLAS0500-001 06/28/2006

	Rates	Fringes
Cement Mason		
GROUP 1	$ 23.79	6.33
GROUP 2	$ 26.24	6.78
GROUP 3	$ 28.92	7.08

CEMENT MASONS - work inside the building line, meeting the following criteria:

GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.

GROUP2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 01/01/2007

	Rates	Fringes
Plumber, Pipefitter, Steamfitter		
(1) Work on strip malls, light commercial, tenant improvement and remodel work	$ 25.20	12.03
(2) Work on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space	$ 31.63	13.32
(3) All other work	$ 32.61	14.27
(4) Camp Pendleton	$ 37.11	14.27

PLUM0016-011 01/01/2007

	Rates	Fringes
Plumber/Pipefitter		
Residential	$ 26.34	10.49

PLUM0345-001 01/01/2007

	Rates	Fringes
Plumbers		
Landscape/Irrigation Fitter	$ 24.90	11.79
Sewer & Storm Drain Work	$ 22.14	13.44

ROOF0045-001 08/01/2006

	Rates	Fringes
Roofer	$ 22.70	5.63

SFCA0669-001 01/01/2007

	Rates	Fringes
Sprinkler Fitter, Fire	$ 29.50	13.40

SHEE0206-001 07/01/2006

	Rates	Fringes
Sheet metal worker		
Camp Pendleton	$ 32.07	13.94
Remainder of San Diego County	$ 30.07	13.94
Sheet Metal		
Sheet Metal Technician	$ 20.66	4.53

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

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	Rates	Fringes
Truck drivers:		
GROUP 1	$ 13.41	12.77
GROUP 2	$ 23.00	12.77
GROUP 3	$ 23.20	12.77
GROUP 4	$ 23.40	12.77
GROUP 5	$ 23.60	12.77
GROUP 6	$ 24.10	12.77
GROUP 7	$ 25.60	12.77

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Swamper; fuel person (fueler without trucks)

GROUP 2: Two-axle dump trucks; two-axle flat bed; bunkerman concrete pumping truck; industrial lift truck; forklift under 15,000 lbs

GROUP 3: Two-axle water truck; three-axle dump truck; three-axle flat bed; erosion control nozzleman; dumpcrete truck less than 6 1/2 yd00; forklift 15,000 lbs. and over; Prell truck; pipeline work truck driver; road oil spreader, cement distributor or slurry driver; bootman; Ross carrier

GROUP 4: Off-road dump trucks under 35 tons mfg rated capacity; four axles but less than seven axles; low-bed truck and trailer; transit mix trucks under 8 yds.; three axle water trucks; erosion control drive; grout mixer truck; dumpcrete, 6- 1/2 yds. and over; dumpster trucks; DW 10's, 20's and over; fuel truck and dynamite; truck greaser; truck mounted mobile sweeper; winch truck, two axles

GROUP 5: Off-road dump trucks 35 tons and over mfg rated capacity; 7 axles or more; transit mix trucks 8 yds. and over; A- frame trucks or Swedish crane; tireman, winch truck 3 axles or more

GROUP 6: Off-road special equipment (including but not limited to water pull tankers, Athey wagons, DJB, B70 Euclids or like equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

EXHIBIT Q-1

EXHIBIT Q-2

Exh. Q-2-2

EXHIBIT R-1

EXHIBIT R-3

EXHIBIT S

[redacted] 2

[redacted]]

EXHIBIT G-7

MCLB ALBANY DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

MCLB ALBANY DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

Dated as of October 1, 2007

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MCLB ALBANY DESIGN/BUILD AGREEMENT

This MCLB Albany Design/Build Agreement (this "Agreement") dated as of October 1, 2007 and effective for all purposes as of October 1, 2007 (the "Effective Date"), is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "Company") and (the "Design/Builder").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**Additional Services Fee**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.2 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.3 "**Agreement**" means this MCLB Albany Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.4 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.5 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.6 "**Architect**" means

1.7 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.8 **"Certificate of Substantial Completion"** means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder in good faith believes that the Work or applicable portion thereof is Substantially Complete.

1.9 **"Certificate of Final Completion"** means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder in good faith believes that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.10 **"Change Directive"** means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.11 **"Change Order"** means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.12 **"Change Proposal"** means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.13 **"Civil Engineer"** means

1.14 **"Code Compliance Consultant"** means Bureau Veritas North America, Inc., a Delaware corporation.

1.15 **"Company"** means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.16 **"Company Event of Default"** shall have the meaning set forth in Section 12.3 hereof.

1.17 **"Company Indemnified Parties"** means the Company, its members, agents, partners and employees.

1.18 **"Construction Agreement"** means that certain MCLB Albany Construction Agreement between the Contractor and the Design/Builder dated as of October 1, 2007, as amended and modified from time to time.

1.20 **"Construction Consultant"** means

1.21 **"Construction Documents"** means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Plans and Specifications must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.22 **"Construction Notice to Proceed"** means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.23 **"Construction Phase"** means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.24 **"Construction Work"** means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.25 **"Contract Documents"** means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.26 **"Contract Time"** means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.27 **"Contractor"** means

1.28 **"Contingency"** shall have the meaning set forth in Section 5.17.

1.29 **"Cost of the Work"** consists of those items of Work which are to be paid for by the Company to the Design/Builder, in accordance with the Contract Documents, and includes those categories of costs set forth as allowable in Section 1 of Exhibit D.

1.30 **"CPM"** means a critical path method schedule in the form of precedents, networks and time sequences.

1.31 **"Credit Provider"** shall have the meaning as set forth in the Operating Agreement.

1.32 "**Day**" or "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "Business Day" or "Business Days" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of Georgia are open for business.

1.33 "**Design/Builder**" means

1.34 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.35 "**Design/Builder Indemnified Parties**" means the Design/Builder, the Contractor and the Architect, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.36 "**Design/Builder Initiated Change Orders**" shall have the meaning set forth in Section 5.1.4 hereof.

1.38 "**Design Group**" means all architects and engineers having a contract with the Design/Builder or Architect to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.39 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.40 "**Design Phase**" means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.41 "**Design Work**" means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.42 "**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement.

1.43 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.44 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.45 "**Facility Engineering and Acquisition Division**" or "**FEAD**" shall have the meaning set forth in Section 2.16.1 hereof.

1.47 **"Fee"** means

1.48 **"Final Completion" or "Finally Complete"** means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.49 **"First Mortgage Loan Documents"** shall have the meaning as set forth in the Operating Agreement.

1.50 **"Force Majeure"** means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.52 **"Governmental Approvals"** means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.53 **"Hazardous Materials"** means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and

the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.54

1.55 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.56 "**Landscaping Work**" shall mean the landscaping provided for new replacement units as more fully described in Exhibit A.

1.57 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4 hereof.

1.58 "**Managing Member**" mean

1.59 "**Mobilization Plan**" shall have the meaning set forth in Section 2.11 hereof.

1.60 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.61 "**Notice to Begin Design**" means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.62 "**Operating Agreement**" means that certain Third Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of October 1, 2007.

1.63 "**Order of Magnitude Documents**" means the drawings, specifications and other documents prepared for the Design/Builder by the Architect for the Company's review and approval prior to the preparation of the Construction Documents, as more particularly specified in Exhibit J hereto. The Order of Magnitude Documents shall illustrate the scale and relationship

of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.64 **"OSHA"** shall have the meaning set forth in Section 10.2.2 hereof.

1.65 **"Overhead"** means home [redacted]

1.66 **"Party"** or **"Parties"** means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.67 **"Payment and Performance Bonds"** means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by the Contractor, as required under the Construction Agreement.

1.68 **"Phase V IFP"** shall have the meaning set forth in the Operating Agreement.

1.69 **"Phase V Offer"** shall have the meaning set forth in the Operating Agreement.

1.70 **"Phases"** means the construction phases of the Project described in Exhibit G, as the same may be modified by agreement of the Company and Design/Builder. Phases subsequent to the initial scope of work under the Construction Agreement are initially included as alternates under the Construction Agreement and will be incorporated into the Construction Agreement by Change Order prior to the commencement of each such Phase.

1.71 **"Project"** means the facilities to be known as Marine Corps Logistics Base (MCLB) Albany Family Housing, Albany, Georgia, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.72 **"Punch list"** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.73 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.74 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.76

1.77 "**Schedule**" means the schedule attached hereto as Exhibit H, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.78 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.79 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.80 "**Site**" is the real property on which the Project will be located, which is more fully described on Exhibit I hereto, and any other real property on which the Work will be performed.

1.81 "**Subcontract**" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.82 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.83 "**Substantial Completion**" or "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.84 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.85 "**Team Subcontract**" means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.86 "**Team Subcontractors**" means the Contractor and the Architect.

1.87 "**Trustee**" shall have the meaning set forth in the Operating Agreement.

1.88 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.89 "**Work**" or "**Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work, Construction Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A and the Schedule set forth in Exhibit H as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the Scheduled Date(s) of Substantial Completion, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 Professional Standard

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified.

Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "Claims") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 Local Conditions; Environmental Site Conditions

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Contract Documents listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to Lead Based Paint, and Asbestos Containing Materials), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

2.4.3 Below Grade Utilities. The Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Phase V IFP, the Contract Documents listed on Exhibit C or known as of the Effective Date by the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A). Any other Hazardous Materials besides the ones specifically identified in this Section 2.4.2 are not included in the Scope of Work.

2.5 Order of Magnitude Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Order of Magnitude Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Order of Magnitude Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Order of Magnitude Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibit H and Exhibit J hereto, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H and Exhibit J hereto.

2.6 Legal Requirements.

2.6.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting the Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. T

To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities,
If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with

the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than the Contractor.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within [redacted] Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Phase V Offer and the general intent of the Phase V IFP and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase V Offer and the general intent of the Phase V IFP and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in phases, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion of such building or group of buildings. If withi after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in

accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period o hall be extended with respect to portions of the Work first performed after Substantial Completion of such building to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. Such costs shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work a have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct it in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work and/or Landscaping Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the

Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder or the Contractor, as appropriate)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance, [redacted] If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work [redacted] have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company [redacted]

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work and/or Landscaping Work, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule [redacted] and shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and /or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

[redacted]

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Site.

The Design/Builder shall prepare a mobilization plan, prior to the start of each Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided, however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom

clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents after [redacted] Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, [redacted] To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in th[redacted] Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCLB Albany Base (to the attention of Base Commander, Headquarters Marine Corps (to the attention of Military Housing Office ("**MHO**") and the DoN (to the attention of the Business Agreements Manager) within a reasonable time after Final Completion of the Work but not to exceed [redacted]

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Facility Engineering and Acquisition Division ("FEAD") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and FEAD may observe such procedures. [redacted]

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule [redacted] shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate). If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents, t[redacted]

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens, or take such other action acceptable to the Company and the title company that permits date down endorsements (such date down endorsements to delete or insure over such liens), within [redacted] Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens, or take such other action acceptable to the Company and the title company that permits date down endorsements (such

date down endorsements to delete or insure over such liens), within sucl Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule ne costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder or the Contractor, as appropriate).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company : An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule or GMP and the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder or the Contractor, as appropriate).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule a in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to

the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results

by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architect's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a

Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder, a

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after suc Day period give the Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule, which is attached hereto as Exhibit H.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion Dates for each building. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within [redacted] Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the Schedule Date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for each Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay").

4.6.1.1 Failure or inability of the Company to make available any or all of the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental

authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within ays after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay withir ays after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, a

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages in an amount equal

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (including the United States Member) have agreed upon the schedule of values shown in Exhibit E, which sets forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made

by the Company not later than [redacted] Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder. The Design/Builder shall maintain in its records (consistent with Section 13.11) (i) conditional lien waivers from the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of [redacted] (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of [redacted] f the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within [redacted] Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

[redacted]

5.5 Retainage.

5.5.1 With respect to the Design Work, [redacted].

5.5.2 With respect to Construction Work, [redacted] Retainage on each Phase shall be withheld until the Phase is [redacted] complete; thereafter, no further Retainage will be withheld on that Phase. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of each Phase shall be released upon Substantial Completion of such Phase, less [redacted] of the value of any uncompleted Work or Punch list items relating to such building. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Work or Punch list items relating to a Phase shall be released upon completion of such uncompleted Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within [redacted] Days of Final Completion of the entire Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule a hall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 Substantial Completion.

When the Design/Builder considers that a building, unit or other portion of the Work, is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work, has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later thar Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement

with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating

this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts; and

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses.

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important

communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in the First Mortgage Loan Documents. Notwithstanding the foregoing, (1) reductions in the line item amount for Landscape Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of [redacted] must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within [redacted] Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the [redacted] e Schedule. If the Design/Builder receives a written communication signed by the Company which the Design/Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in the ([redacted] Schedule, the method and adjustment shall be determined as provided in Section 6.5 below, as applicable. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. [redacted] When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 [redacted]

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any

requested adjustment in the (Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A,

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Project is delayed beyond January 1, 2008, for any reason other than the fault of the Design/Builder,

6.7

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

The Design/Builder shall be responsible for care, custody and control of a Phase or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Phase or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Phase or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of each building, unit or other portion of the Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Project or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Architect pursuant to which the Design/Builder shall delegate the design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts

assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("Self-Performed Work"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess o The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work on the Site.

9.3.2 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds prior to, and as a condition precedent to, commencement of the Construction Work on the Site. The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees. The Payment and Performance Bonds shall be in the forms set forth as Exhibit N-1 and Exhibit N-2 hereto, and shall be issued by the Surety. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees and shall be in the forms set forth on Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by the Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("OSHA").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger anyone's safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after [redacted] Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such [redacted] Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

If an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties withi Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute; During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed withir Business Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of [redacted] then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a **"Design/Builder Event of Default"**:

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after [redacted] Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after [redacted] Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within [redacted] Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an [redacted] Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such [redacted] Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the

Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the

Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of Georgia, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where

reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to MCLB Albany Design/Builder's Consent Agreement dated as of the Effective Date executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees,

officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until [redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made

available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

[Signature Page to MCLB Albany Design/Build Agreement (Page 1 of 2)]
[Signatures Continue on the Following Page]

[Signature Page to MCLB Albany Design/Build Agreement (Page 1 of 2)]
[Signatures Continue on the Following Page]

[Signature Page to MCLB Albany Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit A-1	-	Unit Matrix
Exhibit A-2	-	Materials and Equipment Matrix
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
	-	
Exhibit F	-	Governmental Approvals
Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
	-	;
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination
Exhibit Q	-	[redacted]
Exhibit Q-1	-	
Exhibit Q-2	-	Site Plan

EXHIBIT A

SCOPE OF WORK

Exh. A-2

Exh. A-5

Exh. A-6

Exh. A-7

Exh. A-8

Exh. A-9

Exh. A-10

Exh. A-11

Exh. A-13

Exh. A-14

Attachment A-2-1

Attachment A-2-2

Attachment A-2-4

EXHIBIT B

CONSTRUCTION ALLOWANCE ITEMS

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

Environmental Condition of Property Report, Naval Family Housing Area, Marine Corps Logistics Base Albany, Albany Georgia, prepared by Ensafe for the Southern Division, Naval Facilities Engineering Command, January 2007.

Lead-Based Paint Inspection and Risk Assessment Report for Targeted Buildings, Hill Village, Marine Corps Logistics Base, Albany, Georgia, prepared by J.J. Sosa & Associates for Southern Division, Naval Facilities Engineering Command, December 2006.

Phase I Environmental Site Assessment, Military Family Housing Area, Marine Corps Logistics Base, Albany Georgia, prepared by Apex for Camp Pendleton & Quantico Housing, LLC, September 4, 2007.

Report of Subsurface Exploration and Geotechnical Engineering Evaluation August 10, 2007

Architectural Plans - Replacement Housing – S

Exh. C-2

Exh. C-4

Exh. C-5

Exh. C-6

Exh. C-7

Exh. C-8

Exh. C-9

Exh. C-10

Exh. C-11

EXHIBIT D

COST OF THE WORK

Exh. D-3

Exh. D-5

EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible.

Code Compliance Consultant Plan Review:

The Company shall secure approval of Civil and Architectural documents for code compliance and permitting. The Code Compliance Consultant shall perform the functions normally provided by the local municipality related to code compliance and permitting.

Construction Consultant Inspections: The Company shall commission the services of the Construction Consultant to perform inspection services. The Construction Consultant shall perform the inspection functions normally performed by the local municipality related to building and trade inspections, final inspections, and certificates of occupancy.

Department of the Navy:

Obtain written approval of all plans and specifications from the Navy. Plans and Specifications will be submitted in accordance with Exhibit J of this Agreement.

Air Quality Approvals:

Procure air quality permits from authorities having jurisdiction as required to meet all local, state, and federal air quality standards.

Utilities:

The Company is responsible for all service agreements with service providers for delivery of electric, telephone, CATV, IT, sanitary sewer, and water services to the dwelling units including service agreements and easements without cost to the Design/Builder. The D/B has included the cost of wet utility design (storm, sanitary, and water) and dry utilities (power, telephone, CATV, IT). The D/B is also responsible for the coordination of the dry utility design with the service providers and for securing the service providers approval of the design.

SHPO Approvals:

The Company is responsible for negotiating any Programmatic Agreement, coordinating SHPO requirements, and securing approval from SHPO, if any, for the work under this Agreement.

GDOT:

To the extent that GDOT has jurisdiction on any portion of the work, the Company is responsible to identify the affected work, determine the requirements, coordinate with GDOT, and obtain GDOT approval for work performed under this Agreement.

Wetlands:

The Company is responsible for establishing the extent of wetlands within project limits. The Company is also responsible for obtaining approvals from the governing authority for the work to be performed pursuant to this Agreement that may impact wetlands.

Group Approvals:

Currently there are no known required approvals from citizen groups, associations, etc. However, should such approvals be required the Company shall obtain all necessary approvals from citizen groups, associations, etc. such as the Peninsula Planning Association.

Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Site, such approvals shall be the responsibility of the Company.

EXHIBIT G

PROJECT PHASES

EXHIBIT H

SCHEDULE

EXHIBIT I

SITE DESCRIPTION

ALBANY, GEORGIA – LEGAL DESCRIPTION

All that certain real property situated in the County of Dougherty, State of Georgia, described as follows:

PARCEL 1:

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND, LYING AND BEING IN PART OF LAND LOTS 49, 1ST LAND DISTRICT, DOUGHERTY COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MARKER FOUND WHERE THE EAST LINE OF LAND LOT 50 INTERSECTS THE SOUTH RIGHT OF WAY LINE OF FLEMING ROAD (140' RIGHT OF WAY), THENCE GO NORTH 45°30'28" EAST FOR A DISTANCE OF 925.42 FEET TO A 5/8" REBAR SET, SAID POINT BEING THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING GO THENCE NORTH 22°35'19" EAST A DISTANCE OF 519.65' TO A POINT; THENCE NORTH 66°30'33" EAST A DISTANCE OF 58.46' TO A POINT; THENCE NORTH 26°43'26" EAST A DISTANCE OF 282.51' TO A POINT; THENCE RUN SOUTH 79°49'46" EAST A DISTANCE OF 842.00' TO A POINT; THENCE RUN NORTH 38°09'38" EAST A DISTANCE OF 379.04' TO A POINT; THENCE RUN NORTH 62°07'51" WEST A DISTANCE OF 506.65' TO A POINT; THENCE RUN NORTH 83°51'41" WEST A DISTANCE OF 176.16' TO A POINT; THENCE RUN NORTH 35°52'12" WEST A DISTANCE OF 341.19' TO A POINT; THENCE RUN NORTH 16°45'43" EAST A DISTANCE OF 130.66' TO A POINT; THENCE RUN SOUTH 76°24'12" EAST A DISTANCE OF 90.07' TO A POINT; THENCE RUN NORTH 16°09'44" EAST A DISTANCE OF 121.09' TO A POINT; THENCE RUN SOUTH 26°59'38" EAST A DISTANCE OF 124.13' TO A POINT; THENCE RUN SOUTH 70°31'19" EAST A DISTANCE OF 172.52' TO A POINT; THENCE RUN SOUTH 62°34'06" EAST A DISTANCE OF 310.59' TO A POINT; THENCE RUN SOUTH 74°41'14" EAST A DISTANCE OF 516.31' TO A POINT; THENCE RUN NORTH 25°46'50" EAST A DISTANCE OF 161.53' TO A POINT; THENCE RUN SOUTH 80°54'28" EAST A DISTANCE OF 206.98' TO A POINT; THENCE RUN SOUTH 27°31'48" EAST A DISTANCE OF 60.11' TO A POINT; THENCE RUN NORTH 51°09'50" EAST A DISTANCE OF 247.11' TO A POINT; THENCE RUN SOUTH 43°52'49" EAST A DISTANCE OF 623.41' TO A POINT; THENCE RUN SOUTH 44°14'38" WEST A DISTANCE OF 48.53' TO A POINT; THENCE RUN SOUTH 04°26'51" WEST A DISTANCE OF 205.76' TO A POINT; THENCE RUN SOUTH 48°53'01" EAST A

DISTANCE OF 60.15' TO A POINT; THENCE RUN SOUTH 04°27'00" EAST A DISTANCE OF 155.84' TO A POINT; THENCE RUN SOUTH 06°03'43" WEST A DISTANCE OF 241.32' TO A POINT; THENCE RUN SOUTH 83°00'24" WEST A DISTANCE OF 285.57' TO A POINT; THENCE RUN NORTH 58°16'32" WEST A DISTANCE OF 172.27' TO A POINT; THENCE RUN SOUTH 27°31'38" WEST A DISTANCE OF 191.32' TO A POINT; THENCE RUN SOUTH 11°39'48" WEST A DISTANCE OF 335.90' TO A POINT; THENCE RUN SOUTH 65°42'13" WEST A DISTANCE OF 183.28' TO A POINT; THENCE RUN NORTH 76°31'55" WEST A DISTANCE OF 160.37' TO A POINT; THENCE RUN NORTH 26°36'20" WEST A DISTANCE OF 189.49' TO A POINT; THENCE RUN NORTH 88°45'38" WEST A DISTANCE OF 506.44' TO A POINT; THENCE RUN SOUTH 17°10'59" WEST A DISTANCE OF 208.48' TO A POINT; THENCE RUN SOUTH 74°05'13" WEST A DISTANCE OF 247.60' TO A POINT; THENCE RUN SOUTH 03°17'04" WEST A DISTANCE OF 157.22' TO A POINT; THENCE RUN SOUTH 88°37'57" WEST A DISTANCE OF 511.76' TO A POINT; THENCE RUN NORTH 02°04'44" WEST A DISTANCE OF 118.21' TO A POINT; THENCE RUN NORTH 29°37'56" EAST A DISTANCE OF 135.96' TO A POINT; THENCE RUN NORTH 73°43'18" EAST A DISTANCE OF 256.18' TO A POINT; THENCE RUN NORTH 05°36'29" EAST A DISTANCE OF 83.39' TO A POINT; THENCE RUN NORTH 27°08'31" WEST A DISTANCE OF 145.07' TO A POINT; THENCE RUN NORTH 70°54'46" WEST A DISTANCE OF 97.09' TO A POINT; THENCE RUN SOUTH 31°39'45" WEST A DISTANCE OF 179.40' TO A POINT; THENCE RUN NORTH 88°31'18" WEST A DISTANCE OF 411.52' TO A POINT AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 65.489 ACRES

PARCEL 2:

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND, LYING AND BEING IN PART OF LAND LOTS 48, 49, 72 & 73, 1ST LAND DISTRICT, DOUGHERTY COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MARKER FOUND WHERE THE EAST LINE OF LAND LOT 50 INTERSECTS THE SOUTH RIGHT OF WAY LINE OF FLEMING ROAD (140' RIGHT OF WAY), THENCE GO NORTH 33°35'33" WEST FOR A DISTANCE OF 1635.61 FEET TO A MAG NAIL SET, SAID POINT BEING THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING GO THENCE AROUND A CURVE TO THE LEFT, WHOSE ARC LENGTH IS 1175.26', WHOSE RADIUS IS 897.90' AND WHOSE CHORD BEARING AND DISTANCE IS NORTH 06°15'37" EAST FOR 1093.14' TO A POINT; THENCE RUN NORTH 08°08'12" WEST A DISTANCE 64.17' TO A POINT; THENCE RUN AROUND A CURVE TO THE RIGHT, WHOSE

ARC LENGTH IS 180.57', WHOSE RADIUS IS 1586.54' AND WHOSE CHORD BEARING AND DISTANCE IS NORTH 46°40'58" WEST FOR 180.47' TO A POINT; THENCE RUN NORTH 48°06'15" EAST A DISTANCE OF 136.75' TO A POINT; THENCE RUN NORTH 40°20'04" WEST A DISTANCE OF 203.99' TO A POINT; THENCE RUN NORTH 50°05'46" EAST A DISTANCE OF 258.22' TO A POINT; THENCE RUN AROUND A CURVE TO THE RIGHT, WHOSE ARC LENGTH IS 175.93', WHOSE RADIUS IS 257.23' AND WHOSE CHORD BEARING AND DISTANCE IS NORTH 69°41'23" EAST FOR 172.52' TO A POINT; THENCE RUN NORTH 00°40'15" WEST A DISTANCE OF 224.61' TO A POINT; THENCE RUN NORTH 87°47'02" EAST A DISTANCE OF 122.38' TO A POINT; THENCE RUN SOUTH 68°17'48" EAST A DISTANCE OF 122.04' TO A POINT; THENCE RUN SOUTH 84°11'20" EAST A DISTANCE OF 160.66' TO A POINT; THENCE RUN SOUTH 60°13'53" EAST A DISTANCE OF 142.98' TO A POINT; THENCE RUN SOUTH 27°42'27" EAST A DISTANCE OF 80.27' TO A POINT; THENCE RUN SOUTH 83°58'58" EAST A DISTANCE OF 124.20' TO A POINT; THENCE RUN SOUTH 29°07'28" EAST A DISTANCE OF 525.17' TO A POINT; THENCE RUN SOUTH 34°11'03" EAST A DISTANCE OF 218.89' TO A POINT; THENCE RUN NORTH 89°09'44" EAST A DISTANCE OF 180.54' TO A POINT; THENCE RUN SOUTH 22°47'23" EAST A DISTANCE OF 105.38' TO A POINT; THENCE RUN SOUTH 87°40'18" EAST A DISTANCE OF 47.05' TO A POINT; THENCE RUN SOUTH 29°41'50" EAST A DISTANCE OF 97.88' TO A POINT; THENCE RUN SOUTH 76°37'06" WEST A DISTANCE OF 82.34' TO A POINT; THENCE RUN SOUTH 42°55'10" WEST A DISTANCE OF 78.76' TO A POINT; THENCE RUN SOUTH 42°29'43" EAST A DISTANCE OF 27.89' TO A POINT; THENCE RUN SOUTH 23°57'53" WEST A DISTANCE OF 828.46' TO A POINT; THENCE RUN SOUTH 17°22'37" WEST A DISTANCE OF 544.09' TO A POINT; THENCE RUN NORTH 36°48'10" WEST A DISTANCE OF 213.21' TO A POINT; THENCE RUN NORTH 64°51'00" WEST A DISTANCE OF 282.82' TO A POINT; THENCE RUN SOUTH 89°16'19" WEST A DISTANCE OF 432.49' TO A POINT; THENCE RUN NORTH 37°56'29" WEST A DISTANCE OF 211.06' TO A POINT; THENCE RUN SOUTH 82°28'03" WEST A DISTANCE OF 122.93' TO A POINT AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 55.089 ACRES.

PARCEL 3:

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND, LYING AND BEING IN PART OF LAND LOTS 49, 1ST LAND DISTRICT, DOUGHERTY COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MARKER FOUND WHERE THE EAST LINE OF LAND LOT 50 INTERSECTS THE SOUTH RIGHT OF WAY LINE OF FLEMING

ROAD (140' RIGHT OF WAY), THENCE GO NORTH 45°30'28" EAST FOR A DISTANCE OF 925.42 FEET TO A 5/8" REBAR SET, SAID POINT BEING THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING GO THENCE NORTH 88°31'18" WEST A DISTANCE OF 277.03' TO A POINT; THENCE RUN NORTH 40°10'49" WEST A DISTANCE OF 238.87' TO A POINT; THENCE RUN NORTH 36°48'10" WEST A DISTANCE OF 110.54' TO A POINT; THENCE RUN NORTH 17°22'37" EAST A DISTANCE OF 544.09' TO A POINT; THENCE RUN NORTH 23°57'53" EAST A DISTANCE OF 828.46' TO A POINT; THENCE RUN SOUTH 42°29'43" EAST A DISTANCE OF 10.47' TO A POINT; THENCE RUN NORTH 66°46'20" EAST A DISTANCE OF 124.55' TO A POINT; THENCE RUN NORTH 89°08'08" EAST A DISTANCE OF 351.54' TO A POINT; THENCE RUN NORTH 26°37'32" EAST A DISTANCE OF 161.46' TO A POINT; THENCE RUN SOUTH 74°18'53" EAST A DISTANCE OF 226.89' TO A POINT; THENCE RUN SOUTH 26°59'38" EAST A DISTANCE OF 30.28' TO A POINT; THENCE RUN SOUTH 16°09'44" WEST A DISTANCE OF 121.09' TO A POINT; THENCE RUN NORTH 76°24'12" WEST A DISTANCE OF 90.07' TO A POINT; THENCE RUN SOUTH 16°45'43" WEST A DISTANCE OF 130.66' TO A POINT; THENCE RUN SOUTH 35°52'12" EAST A DISTANCE OF 341.19' TO A POINT; THENCE RUN SOUTH 83°51'41" EAST A DISTANCE OF 176.16' TO A POINT; SOUTH 62°07'51" EAST A DISTANCE OF 506.65' TO A POINT; THENCE RUN SOUTH 38°09'38" WEST A DISTANCE OF 379.04' TO A POINT; THENCE RUN NORTH 79°49'46" WEST A DISTANCE OF 842.00' TO A POINT; THENCE RUN SOUTH 26°43'26" WEST A DISTANCE OF 282.51' TO A POINT; THENCE RUN SOUTH 66°30'33" WEST A DISTANCE OF 58.56' TO A POINT; THENCE RUN SOUTH 22°35'19" WEST A DISTANCE OF 519.65' TO A POINT AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 34.444 ACRES.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] days of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within th[redacted]lay review time, then afte[redacted]ys written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. The following constitute the anticipated review stages of the Design Work:

    a. Design Development Documents: Review and approval will occur at the Progress Set completion and Closing Progress Set completion.

        1. The Progress Set will include the first iteration of Civil and Architectural documents and is intended to demonstrate that design progress has been achieved.

        2. The Closing Progress Set will include Civil and Architectural (including Structural, Mechanical, Electrical and Plumbing) documents with sufficient detail to demonstrate design intent and substantial conformance to Phase V IFP requirements and DoN requests.

    b. Construction Documents: Review and approval will occur at four different times:

1. Permit and Pricing (50% Design Set): The Permit and Pricing (50% Design Set) will be completed for Civil and Architectural (including Structural, Mechanical, Electrical and Plumbing); the date of completion for the Civil portion may precede the remainder of the set. Completion of these documents will coincide with the submission to the Third Party Plan Reviewer for initial code compliance plan review. At this time the Company will review all Drawings and Specifications.

2. Final (95% Design Set): The Final (95% Design Set) will be completed for Civil and Architectural (including Structural, Mechanical, Electrical and Plumbing); the date of completion for the Civil portion may precede the remainder of the set. Completion of these documents will coincide with the submission to the Third Party Plan Reviewer for final code compliance plan review. At this time the Company will give final review of all drawings and specifications.

3. Back-check Set: The Back-check Set will be completed for Civil and Architectural (including Structural, Mechanical, Electrical and Plumbing); the date of completion for the Civil portion may precede the remainder of the set. Completion of these documents will coincide with the submission to the Third Party Plan Reviewer for final back-check review of code compliance. The Company will give final back-check review and approval of all Drawing and Specifications upon review of the Back-check Set.

4. 100% Construction Documents: The 100% Construction Document will be completed for Civil and Architectural (including Structural, Mechanical, Electrical and Plumbing); the date of completion for the Civil portion may precede the remainder of the set. Completion of these documents will coincide with the submission to the Third Party Plan Reviewer for certification of approval and issued permit.

5. The following constitutes the anticipated submission schedule for the Design Work:

6. The Design/Builder shall provide a submittal register detailing the items to be submitted by the Design/Builder to the Company for approval within [redacted] days of the execution of this Agreement. The Company shall review and approve this list within [redacted] days from receipt of the register. The Design/Builder will then provide submittals for review and approval in accordance with the register. The Company shall approve individual submittals submitted by the Design/Builder within [redacted] days of receipt.

6. Notwithstanding the foregoing, if the Design/Builder and/or a Design Subcontractor determine that the Company's approval of a specific component, item, or system is required to continue the Design Work in accordance with the Schedule, and such approval is not described above, the Company shall give its approval in accordance with paragraph 2 above.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted]. Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability: Coverage to comply with the laws of the state of Georgia where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds usin or its equivalent. Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a written notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

DESIGN GROUP MEMBERS

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[See Attached]

Exh. N-1-12

G

Exh. N-2-3

EXHIBIT O

EXHIBIT P

DAVIS BACON COMPLIANCE

Design-Builder Audit Procedure:

1. Design/Builder (which also may be referred to as "Contractor" or "Prime Contractor") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the applicable Wage Decision (attached hereto as Appendix P-1), and the Payrolls and Basic Records provision. The Davis-Bacon Act as found in Federal Acquisition Regulation (FAR) 52.222-6 is provided below, and is followed by the Payrolls and Basic Records provision.

2. Design-Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design-Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. Davis-Bacon Act (Feb 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for

fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.
(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid

the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

7. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

[SEE ATTACHED]

A070020 MOD 0 REVISED 07/20/07 GA20
******** THIS WAGE DETERMINATION WAS REPLACED ON 07/20/07********
General Decision Number: GA070020 02/09/2007

Superseded General Decision Number: GA20030020

State: Georgia

Construction Types: Residential

Counties: Baker, Calhoun, Clay, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Quitman, Randolph, Seminole and Terrell Counties in Georgia.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/09/2007

SUGA1981-008 08/01/1981

	Rates	Fringes
Air Conditioning & Heating Mechanic	$ 5.15	
Bricklayer	$ 7.00	
Carpenter	$ 5.87	
Cement Mason	$ 5.15	
Drywall Finisher	$ 6.08	
Drywall Hanger	$ 7.85	
Electrician	$ 5.15	
Insulation Installer	$ 5.15	
Laborers:		
Asphalt raker	$ 5.15	
Mason tender	$ 5.15	
Unskilled	$ 5.15	
Painter	$ 5.54	
Plasterer	$ 7.13	
Plumbers and Pipefitters	$ 6.00	
Power equipment operators:		
Backhoe	$ 5.15	
Front end loader	$ 5.15	

Motor grader.....$ 6.00
Roller.....$ 5.15
Scraper, pan.....$ 5.15
Spreader, screed.....$ 5.15
Tractor.....$ 5.15

Roofer.....$ 5.15

Sheet Metal Worker.....$ 5.74

Tile Setter.....$ 6.25

Truck Driver.....$ 5.15

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

EXHIBIT Q

EXHIBIT Q-1

EXHIBIT Q-2

SITE PLAN

[See Attached]

EXHIBIT G-8

COSTS AND RESPONSIBILITIES PERFORMED BY THE COMPANY (QUANTICO DESIGN/BUILD AGREEMENT)

EXHIBIT G-9

COSTS AND RESPONSIBILITIES PERFORMED BY THE COMPANY (INITIAL PENDLETON DESIGN/BUILD AGREEMENT)

EXHIBIT G-10

COSTS AND RESPONSIBILITIES PERFORMED BY THE COMPANY (PHASE II DESIGN/BUILD AGREEMENT)

EXHIBIT G-11

PHASE VI DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

PHASE VI DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

[redacted] as Design/Builder

Dated as of January 15, 2010

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PHASE VI DESIGN/BUILD AGREEMENT

This Phase VI Design/Build Agreement (this "**Agreement**") dated as of January 15, 2010 and effective for all purposes as of January 15, 2010 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**ACM**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.2 "**Additional Services Fee**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.3 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.4 "**Agreement**" means this Phase VI Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.5 "**Alternate**" shall have the meaning set forth in Section 9.3.2 hereof.

1.6 "**Amended and Restated Ground Lease**" shall have the meaning set forth in the Operating Agreement.

1.7 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the applicable Site and/or the Work.

1.8 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.9 "**Architect**" means

1.10 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.11 "**CCIP**" shall have the meaning set forth in Exhibit D hereof.

1.12 "**Certificate of Substantial Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.13 "**Certificate of Final Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.14 "**Change Directive**" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the [redacted] Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.15 "**Change Order**" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust [redacted]e Schedule, and which shall constitute a Modification. [redacted] Schedule may be changed only by Change Order.

1.16 "**Change Proposal**" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.17 "**Civil Engineer**" means [redacted]

1.18 "**Claims**" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.19 "**Company**" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.20 "**Company Event of Default**" shall have the meaning set forth in Section 12.3 hereof.

1.21 "**Company Indemnified Parties**" means the Company, its members, agents, partners and employees.

1.22 "**Construction Agreement**" means, either individually or collectively, (i) that certain Marine Palms New Build Construction Agreement, (ii) that certain Phase VI Stuart Mesa Construction Agreement, or (iii) that certain O-6 Renovation Construction Agreement.

1.24 "**Construction Consultant**" means [redacted] its successors and assigns.

1.25 "**Construction Documents**" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Construction Documents must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.26 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that a Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.27 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.28 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.29 "**Contract Documents**" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.30 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.31 "**Contractor**" means the [redacted]

1.32 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.33 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D. [redacted]

1.34 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.35 "**Credit Provider**" shall have the meaning as set forth in the Operating Agreement.

1.36 "**D/B Submission**" shall have the meaning set forth in Exhibit F attached hereto.

1.37 "**Day**" **or** "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "**Business Day**" or "**Business Days**" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of California are open for business.

1.38 "**Design/Builder**" means

1.39 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.40 "**Design/Builder Indemnified Parties**" means the Design/Builder, the Contractor and the Architect, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.41 "**Design/Builder Initiated Change Orders**" means Design/Builder initiated Change Orders other than any Force Majeure Change Orders.

1.42 "**Design Architect Agreement**" means that certain Phase VI Design Architect Agreement between the Architect and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.43 "**Design Group**" means all architects and engineers having a contract with the Design/Builder or Architect to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M-1 (with respect to the Marine Palms New Build Scope of Work), Exhibit M-2 (with respect to the Phase VI Stuart Mesa Scope of Work) and Exhibit M-3 (with respect to the O-6 Renovation Scope of Work) attached hereto. The Architect is a member of the Design Group where the context requires.

1.44 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.45 "**Design Phase**" means the period set forth in the Schedule commencing with the Design/Builder's receipt of a Notice to Begin Design and ending upon the date the Company approves the Construction Documents.

1.46 "**Design Work**" means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.47 "**DoN**" means the United States of America, Department of the Navy.

1.48 "**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement.

1.49 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.50 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.51 **"Facility Engineering and Acquisition Division" or "FEAD"** shall have the meaning set forth in Section 2.16.1 hereof.

1.52 "**Fee**" means

1.53 "**Final Completion" or "Finally Complete**" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.54 "**First Mortgage Loan Documents**" shall have the meaning as set forth in the Operating Agreement.

1.55 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.57 "**Governmental Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.58 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.59 "**Hourly Rates for Additional Services**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.60

1.61 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.62 "**Landscaping Work**" shall mean the landscaping provided for new units as more fully described in Exhibit A-1, Exhibit A-2, or Exhibit A-3, respectively.

1.63 "**LBP**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.64 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4 hereof.

1.65 "**Managing Member**" mean

1.66 "**Marine Palms New Build Construction Agreement**" means that certain Marine Palms New Build Construction Agreement between the Contractor and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.67 "**Marine Palms New Build Schedule**" means the schedule attached hereto as Exhibit H-1, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work at the Marine Palms New Build Site. The Marine Palms New Build Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.68 "**Marine Palms New Build Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A-1 hereto.

1.69 "**Marine Palms New Build Site**" means the property identified on Exhibit I-1 attached hereto.

1.70 "**Mobilization Plan**" shall have the meaning set forth in Section 2.11 hereof.

1.71 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.72 "**Notice to Begin Design**" means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.73 "**O-6 Renovation Construction Agreement**" means that certain O-6 Renovation Construction Agreement between the Contractor and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.74 "**O-6 Renovation Schedule**" means the schedule attached hereto as Exhibit H-3, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work at the O-6 Renovation Site. The O-6 Renovation Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.75 "**O-6 Renovation Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A-3 hereto.

1.76 "**O-6 Renovation Site**" means the property identified on Exhibit I-3 attached hereto.

1.77 "**Operating Agreement**" means that certain Fourth Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of January 15, 2010.

1.78 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.79 "**Overhead**" means [redacted]

1.80 "**Party**" **or** "**Parties**" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.81 "**Payment and Performance Bonds**" means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work at the Sites, including payment for all materials and labor furnished or supplied in connection with such Construction Work, by the Contractor, as required under the applicable Construction Agreement.

1.82 "**Phase VI Offer**" shall have the meaning as set forth in the Operating Agreement.

1.83 "**Phase VI IFP**" shall have the meaning as set forth in the Operating Agreement.

1.84 "**Phase VI Stuart Mesa Construction Agreement**" means certain Phase VI Stuart Mesa Construction Agreement between the Contractor and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.85 "**Phase VI Stuart Mesa Schedule**" means the schedule attached hereto as Exhibit H-2, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work at the Phase VI Stuart Mesa Site. The Phase VI Stuart Mesa Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.86 "**Phase VI Stuart Mesa Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A-2 hereto.

1.87 "**Phase VI Stuart Mesa Site**" means the property identified on Exhibit I-2 attached hereto.

1.88 "**Product Data**" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.89 "**Project**" means the facilities located on the Sites, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.90 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.91 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.92 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.94 "**Schedule**" means, individually or collectively, the Marine Palms New Build Schedule, the Phase VI Stuart Mesa Schedule, or the O-6 Renovation Schedule.

1.95 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.96 "**Scope of Work Submittal Documents**" means the drawings, specifications and other documents prepared for the Design/Builder by the Architect (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Scope of Work Submittal Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project, and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.97 "**Self-Performed Work**" shall have the meaning set forth in Section 8.3 hereof.

1.98 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.99 "**Shop Drawings**" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.100 "**Sites**" means the Marine Palms New Build Site, the Phase VI Stuart Mesa Site and the O-6 Renovation Site (each of which may be referred to herein individually as a "**Site**"), as more

fully described on Exhibit I-1, Exhibit I-2, Exhibit I-3 hereto, respectively, and any other real property on which the Work will be performed.

1.101 "**SMAP Option**" shall have the meaning set forth in Section 2.1.2 hereof.

1.102 "**SMAP Option Units Change Order**" shall have the meaning set forth in Section 2.1.2 hereof.

1.103 "**Subcontract**" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.104 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.105 "**Substantial Completion**" **or** "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.106 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.107 "**Team Subcontract**" means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.108 "**Team Subcontractors**" means the Contractor and the Architect.

1.109 "**Trustee**" shall have the meaning set forth in the Operating Agreement.

1.110 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.111 "**Work**" **or** "**Scope of Work**" means, either individually or collectively, the Marine Palms New Build Scope of Work, the Phase VI Stuart Mesa Scope of Work or the O-6 Renovation Scope of Work. The terms Work or Scope of Work include Design Work, Construction Work, and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

2.1.1 The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A-1, Exhibit A-2 and Exhibit A-3, and the Schedule set forth in Exhibit H-1, Exhibit H-2 and Exhibit H-3, as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A-1, Exhibit A-2 and Exhibit A-3, respectively. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the Scheduled Date(s) of Substantial Completion, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.1.2

2.1.3 As more particularly described in the O-6 Renovation Scope of Work, five units in total are to be renovated at the O-6 Renovation Site pursuant to a delivery schedule outlined in the O-6 Renovation Scope of Work and the O-6 Renovation Schedule. The O-6 Renovation Schedule assumes that the O-6 Renovation Scope of Work shall be performed continuously, and that the Design/Builder will not have to demobilize or be delayed from starting the next unit set

forth in the O-6 Renovation Schedule. Among other things, in the event the Company fails to deliver the O-6 First Supplemental Notice to Proceed (as defined in the O-6 Renovation Scope of Work) and/or the O-6 Second Supplemental Notice to Proceed (as defined in the O-6 Renovation Scope of Work) on or before the Second O-6 Scope Reduction Trigger Date (as defined in the O-6 Renovation Scope of Work), then the parties shall negotiate and execute the O-6 Deductive Change Order, all as more particularly defined and described in the O-6 Renovation Scope of Work.

The Design/Builder will mobilize to begin work on the O-6 Renovation Scope of Work within thirty (30) days after receiving the Construction Notice to Proceed pertaining to the Initial O-6 Units from the Company. The parties acknowledge and agree that the O-6 Renovation Scope of Work a is contingent upon the Design/Builder's ability to share management and overhead resources between the O-6 Renovation Site and the Marine Palms New Build Site. Accordingly, the Company acknowledges that, notwithstanding anything to the contrary in this Agreement, the Design/Builder must receive the Construction Notice to Proceed for the Marine Palms New Build Scope of Work within thirty (30) days following the Design/Builder's receipt of a Construction Notice to Proceed for the O-6 Renovation Scope of Work in order to capture the shared overhead and management resources described herein. If the Construction Notice to Proceed for the Marine Palms New Build Scope of Work is not received by the Design/Builder within such thirty (30) day period, the Company agrees that the Design/Builder will not be required to execute the O-6 Renovation Scope of Work i without a Change Directive in accordance with Article 6 of this Agreement.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or

copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A-1, Exhibit A-2 and Exhibit A-3, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Sites; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Contract Documents listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than f[redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the[redacted]hedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Sites (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to, LBP and ACM), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

2.4.3 Below Grade Utilities. Unless otherwise set forth in Exhibit A-1, Exhibit A-2 or Exhibit A-3, respectively, the Design/Builder also includes in the Scope of Work the removal of

any below grade utilities which will interfere with new construction and which were identified in the Phase VI IFP (as it relates to the Work), the Contract Documents listed on Exhibit C, or known as of the Effective Date to the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A-1, Exhibit A-2 or Exhibit A-3, respectively. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents or known as of the Effective Date by the Design/Builder or Affiliates, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A-1, Exhibit A-2 or Exhibit A-3, respectively). Any other Hazardous Materials besides those specifically identified in this Section 2.4.3 and Section 2.4.2 above are not included in the Scope of Work.

2.5 Scope of Work Submittal Documents and Construction Documents.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibit H-1 and Exhibit J-1 (with respect to the Marine Palms New Build Scope of Work) or set forth in Exhibit H-2 and Exhibit J-2 (with respect to the Phase VI Stuart Mesa Scope of Work) hereto or set forth in Exhibit H-3 and Exhibit J-3 (with respect to the O-6 Renovation Scope of Work), and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H-1, Exhibit H-2 or Exhibit H-3, respectively. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H-1, Exhibit H-2 or Exhibit H-3, respectively.

2.6 Legal Requirements.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting the Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A-1, Exhibit A-2 or Exhibit A-3 hereto, respectively, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within [redacted] Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in

substantial conformance with the intent of the Phase VI Offer and the general intent of the Phase VI IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities in lieu of what is set forth in the Construction Documents, subject to Exhibit A-1, Exhibit A-2 or Exhibit A-3, respectively, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. If the Design/Builder elects to reuse existing utilities pursuant to the foregoing, and Exhibit A-1, Exhibit A-2 or Exhibit A-3, respectively, contemplate Design/Builder's construction of new utilities, a deductive Change Order shall be issued for the cost of the utilities work no longer required. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase VI Offer and the general intent of the Phase VI IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in accordance with the Schedule, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion such building or group of buildings. If

within [redacted] after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of [redacted] shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to [redacted] after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. The costs to correct Work which is not in accordance with the requirements of the Contract Documents shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work [redacted] have been distributed to the Company, the costs in connection with such warranty work shall be paid [redacted] Notwithstanding the foregoing, if the correction work referenced in this Section 2.8.4 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work and/or Landscaping Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's

expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upo Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance, If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Sites portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work a have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company Notwithstanding the foregoing, if the removal work referenced in this Section 2.8.10 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work or Landscaping Work, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule c l shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Sites at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Sites.

The Design/Builder shall prepare a mobilization plan, prior to the start of the Construction Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Sites to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Sites with materials or equipment. The Design/Builder shall at all times confine its access and use of the Sites to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Sites, or relevant portions thereof, at certain times, and to the extent that any or all of the Sites are not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in th Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with

prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Sites and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Sites, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Sites in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte[redacted]Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, [redacted]To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in th[redacted]Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Sites. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Sites one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design/Builder shall maintain at the Sites approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCAGCC Twentynine Palms (to the attention of Base Commander) (with respect to the Marine Palms New Build Site and the O-6 Renovation Site), MCB Camp Pendleton (to the attention of Base Commander) (with respect to the Phase VI Stuart Mesa Site), Headquarters Marine Corps (to the attention of Military Housing Office ("**MHO**")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MCAGCC Twentynine Palms (with respect to the Marine Palms New Build Site and the O-6 Renovation Site), the Base Commander of MCB Camp Pendleton (with respect to the Phase VI

Stuart Mesa Site), and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed t[redacted] Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Facility Engineering and Acquisition Division ("**FEAD**") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and FEAD may observe such procedures. [redacted]

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule [redacted] nd shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents, [redacted]

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Sites, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens withir ays after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule c e costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross

negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule nd the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the

Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J-1, Exhibit J-2 or Exhibit J-3, respectively.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule [redacted] in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon [redacted] Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Sites by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Sites. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Sites by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorneys' fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule If it is determined that the Design/Builder was not at fault, all costs of defense, including attorneys' fees, shall be paid by

the Company a n accordance with the Change Order provisions of this Agreement.

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architects' agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure withir Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within sucl Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such period. If the Design/Builder within such Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the applicable Schedule attached hereto as Exhibit H-1, Exhibit H-2 or Exhibit H-3.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall set forth separate Substantial Completion Dates for each building. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Preconstruction Activities.

Within Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time

sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 Construction Activities.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the Scheduled Date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for the Construction Phase.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available any or all of the Sites in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, approvals and authorizations from federal, state, or local governments or quasi-governmental agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Sites not brought to the Sites by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay,

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth on Exhibit H-1, Exhibit H-2 or Exhibit H-3, respectively (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay liquidated damages ("**Liquidated Damages**") in an amount equal

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 Schedule of Values.

The Design/Builder has submitted to the Company, and the Parties (including the United States Member) have agreed upon the schedule of values shown in Exhibit E which sets forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the

Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing withi Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on the Construction Work shall be withheld until such Construction Work is complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable directly to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of the Construction Work shall be released upon Substantial Completion of such Construction Work, less f the value of any uncompleted Construction Work or Punch list items relating to such buildings. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Construction Work or Punch list items shall be released upon completion of such uncompleted Construction Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released withi Days of Final Completion of the entire Construction Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Sites for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Sites, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule shall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 Substantial Completion.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than thirty (30) Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault

of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J-1, Exhibit J-2 or Exhibit J-3, respectively;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Sites and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses; and

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Sites during performance of the

Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Sites.

The Design/Builder shall maintain at the Sites for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in the First Mortgage Loan Documents. Notwithstanding the foregoing: (1) reduction in the line item amount for Landscape Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess o ust be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the e Schedule. If the Design/Builder receives a written communication signed by the Company, which the Design/Builder believes is a Change Directive, but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in r Schedule, the method and adjustment shall be determined as provided in Section 6.5 below. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedule such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended

pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A-1, Exhibit A-2 or Exhibit A-3, respectively,

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Project is delayed beyond (a) March 15, 2010 with respect to the O-6 Renovation Scope of Work, (b) March 29, 2010 with respect to the Marine Palms New Build Scope of Work, and (c) April 1, 2010 with respect to the Phase VI Stuart Mesa Scope of Work, for any reason other than the fault of the Design/Builder, Schedule shall be equitably adjusted to take into account changes in the cost of labor and materials.

6.7

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

The Design/Builder shall be responsible for care, custody and control of each Site or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Site or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Site or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of the entire Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of a Site or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of a Site or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to such Site or portion thereof which may thereafter occur. In the event that loss or damage to a Site or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with each Architect pursuant to which the Design/Builder shall delegate all design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed

to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess of The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work at a Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees, Prior to the commencement of the Work on any alternate under the applicable Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the applicable Construction Agreement, as and when provided in the applicable Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees, and shall be in the forms set forth on Exhibit N-1 (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds

shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Sites under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Sites or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Sites who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or any Site to be loaded so as to endanger anyone's safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Sites and any adjacent areas affected by the Work secure

in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure each Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Sites.

The Design/Builder shall be responsible for any and all damage to property at the Sites except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

In an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site(s) and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess o then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, afte Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, afte Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are

instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated withi[redacted]Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an[redacted]Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within [redacted]Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Sites and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished. [redacted]

12.3 Company Events of Default.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of [redacted]Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of [redacted]Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of [redacted] Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon [redacted] Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within [redacted] Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such

period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of

any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless relating to all supplements and/or amendments to any exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Phase VI Design/Builder's Consent Agreement dated as of the Effective Date executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of [redacted]ears after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

[Signature Page to Phase VI Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

COMPANY:

[Signature Page to Phase VI Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

COMPANY:

[Signature Page to Phase VI Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN/BUILDER:

[Signature Page to Phase VI Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A-1	-	Marine Palms New Build Scope of Work
Exhibit A-2	-	Phase VI Stuart Mesa Scope of Work
Exhibit A-3	-	O-6 Renovation Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit F	-	Governmental Approvals
Exhibit G	-	Intentionally Omitted
Exhibit H-1	-	Marine Palms New Build Schedule
Exhibit H-2	-	Phase VI Stuart Mesa Schedule
Exhibit H-3	-	O-6 Renovation Schedule
Exhibit I-1	-	Marine Palms New Build Site Description
Exhibit I-2	-	Phase VI Stuart Mesa Site Description
Exhibit I-3	-	O-6 Renovation Site Description
Exhibit J-1	-	Procedures for Review of Design Materials (Marine Palms New Build Site)
Exhibit J-2	-	Procedures for Review of Design Materials (Phase VI Stuart Mesa Site)
Exhibit J-3	-	Procedures for Review of Design Materials (O-6 Renovation Site)
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M-1	-	Design Group Members (Marine Palms New Build Scope of Work)
Exhibit M-2	-	Design Group Members (Phase VI Stuart Mesa Scope of Work)
Exhibit M-3	-	Design Group Members (O-6 Renovation Scope of Work)
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	[redacted]
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination (Marine Palms New Build Site and O-6 Renovation Site)
Appendix P-2	-	Davis Bacon Wage Determination (Phase VI Stuart Mesa Site)
Exhibit Q	-	

EXHIBIT A-1

MARINE PALMS NEW BUILD SCOPE OF WORK

[SEE ATTACHED]

EXHIBIT A-1

29 PALMS MCAGCC PPV PHASE VI – MARINE PALMS NEW BUILD

SCOPE OF WORK

COMPANY:

CAMP PENDLETON & QUANTICO HOUSING, LLC, a Delaware limited liability company

COMPANY:

CAMP PENDLETON & QUANTICO HOUSING, LLC, a Delaware limited liability company

COMPANY:

CAMP PENDLETON & QUANTICO HOUSING, LLC, a Delaware limited liability company

#401420490

Exh. A-3-12

Fil

EXHIBIT B

CONSTRUCTION ALLOWANCE ITEMS

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

[SEE ATTACHED]

EXHIBIT C-1

LIST OF CONTRACT DOCUMENTS

(Marine Palms New Build)

1. Base Exterior Architecture Plan (BEAP) Marine Corp Air Ground Combat Center Twentynine Palms California January 2008. Prepared by

2. Final Phase I Environmental Site Assessment; Marine Palms Proposed Housing Construction Site Camp Pendleton & Quantico Housing Phase VI; MAGTFTC Twentynine Palms California.

3. General Decision Number: CA20070028 1/18/2008 CA28

4. Geotechnical Investigation Proposed New Marine Palms (Phase VI) Housing Twentynine Palms, California. Prepared by GeoSoils Inc. June 5, 2009

5. SWPPP Storm Water Pollution Prevention Plan (to be prepared post-closing)

6. Phase VI Marine Palms Camp Pendleton Quantico Housing LLC Closing Drawings:

   - Marine Palms Closing Drawing Submittal – Site Work
     October 12, 2009
     Plans b

   - Marine Palms Closing Drawing Submittal – Architecture
     October 12, 2009
     Plans by

EXHIBIT C-2

LIST OF CONTRACT DOCUMENTS

(Phase VI Stuart Mesa)

1. Base Exterior Architecture Plan (BEAP) 1995, prepared b[redacted] for the Department of the Navy Southwest Division Naval Facilities Engineering Command, Officer In Charge of Construction for Camp Pendleton California

2. Final (Rev.1) Phase I Environmental Site Assessment; New Stuart Mesa Housing Parcel Camp Pendleton & Quantico Housing Phase VI; MCB Camp Pendleton, California. Prepared by [redacted] for Camp Pendleton & Quantico Housing, LLC MCB Camp Pendleton. December 2009

3. General Decision Number: CA20070001 1/18/2008 CA1

4. Geotechnical Investigation Proposed New Stuart Mesa (Phase VI) Housing MCB Camp Pendleton Oceanside, San Diego County California. Prepared by [redacted]

5. SWPPP Storm Water Pollution Prevention Plan (to be prepared post-closing)

6. Phase VI Stuart Mesa Camp Pendleton Quantico Housing LLC Closing Drawings:

   - Stuart Mesa Closing Drawing Submittal – Site Work
     October 12, 2009
     Plans [redacted].

   - Stuart Mesa Closing Drawing Submittal – Architecture
     October 12, 2009
     Plans t[redacted].

EXHIBIT C-3

LIST OF CONTRACT DOCUMENTS

(O-6 Renovation)

1. Base Exterior Architecture Plan (BEAP) Marine Corp Air Ground Combat Center Twentynine Palms California January 2008.

2. General Decision Number: CA20070028 1/18/2008 CA28

3. SWPPP Storm Water Pollution Prevention Plan (to be prepared post-closing)

4. Phase VI Ocotillo Heights (O6 Renovations) Camp Pendleton Quantico Housing LLC Closing Drawings:

   - Ocotillo Heights Closing Drawing Submittal – Site Work & Architecture
     October 12, 2009
     Plans by

EXHIBIT D

COST OF THE WORK

EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible prior to commencement of any construction activities by the Design/Builder:

Department of the Navy:

1. Prior to the commencement of construction, a demolition Plan will be submitted to and approved by the DoN.

2. Obtain written approval by the DoN on final design Construction Documents will be submitted in accordance with Exhibit J-1, Exhibit J-2 or Exhibit J-3, respectively, of this Agreement.

3. Provide all approvals and oversight, if necessary, to ensure that the Scope of Work as submitted by the Design/Builder satisfies all natural and cultural resources requirements as outlined in the Company documents.

4. With respect to the Phase VI Stuart Mesa Site, prior to commencement of construction on the SMAP Premises, written notice from the Company that the SMAP Premises (whether individually, or collectively, as applicable) have been added to the Phase VI Stuart Mesa Site.

5. With respect to the Phase VI Stuart Mesa Site, prior to commencement of construction on the Off-Site Sewer Easement Area, written notice from the Company that the Off-Site Sewer Easement Area Terms and Conditions have been satisfied.

Third Party Plan Review:

6. The Company shall obtain a third party to review the Construction Documents for approval.

Utilities:

7. The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging PWC utilities.

Group Approvals:

8. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

9. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Site, such approvals shall be the responsibility of the Company.

The term "**D/B Submission**" shall mean any of the items described in paragraphs 1 and 3 above, or any component thereof.

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H-1

MARINE PALMS NEW BUILD SCHEDULE

[SEE ATTACHED]

EXHIBIT H-2

PHASE VI STUART MESA SCHEDULE

[SEE ATTACHED]

EXHIBIT H-3

O-6 RENOVATION SCHEDULE

[SEE ATTACHED]

EXHIBIT I-1

MARINE PALMS NEW BUILD SITE DESCRIPTION

That certain land ground leased by the Company serving Marine Corps Air Ground Combat Center, Twentynine Palms, California, commonly referred to as the Phase VI Marine Palms neighborhood and part of the Phase VI Twentynine Palms Project (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-12 to the Amended and Restated Ground Lease, together with any improvements located thereon.

EXHIBIT I-2

PHASE VI STUART MESA SITE DESCRIPTION

That certain land ground leased by the Company serving Marine Corps Base Camp Pendleton, San Diego County, California, commonly referred to as the Phase VI Stuart Mesa neighborhood and part of the Phase VI Pendleton Project (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-13 to the Amended and Restated Ground Lease, together with any improvements located thereon.

EXHIBIT I-3

O-6 RENOVATION SITE DESCRIPTION

That certain land ground leased by the Company serving Marine Corps Air Ground Combat Center, Twentynine Palms, California, commonly referred to as the Phase III Ocotillo Heights neighborhood and part of the Phase III Land (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-6 to the Amended and Restated Ground Lease, together with any improvements located thereon.

EXHIBIT J-1

PROCEDURES FOR REVIEW OF DESIGN MATERIALS
(MARINE PALMS NEW BUILD SITE)

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] Days of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H-1. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within th[redacted]lay review time, then afte[redacted] Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

[DESIGN SUMMARY ATTACHED]

SUBMITTAL SCHEDULE (PHASE VI MARINE PALMS SITE)

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EXHIBIT J-2

PROCEDURES FOR REVIEW OF DESIGN MATERIALS
(PHASE VI STUART MESA SITE)

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted] of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H-2. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the [redacted] ay review time, then afte[redacted] Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

[DESIGN SUMMARY ATTACHED]

SUBMITTAL SCHEDULE (PHASE VI STUART MESA SITE)

EXHIBIT J-3

PROCEDURES FOR REVIEW OF DESIGN MATERIALS
(O-6 RENOVATION SITE)

4. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

5. The Company will provide written approval within [redacted] Days of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H-3. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the [redacted] day review time, then afte[redacted] Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

6. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

[DESIGN SUMMARY ATTACHED]

SUBMITTAL SCHEDULE (PHASE VI OCOTILLO HEIGHTS SITE) (O-6 HOUSING)

EXHIBIT K

AUTHORIZED REPRESENTATIVES

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability: Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: T[redacted]

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M-1

DESIGN GROUP MEMBERS
(PHASE VI STUART MESA SCOPE OF WORK)

EXHIBIT M-2

DESIGN GROUP MEMBERS
(MARINE PALMS NEW BUILD SCOPE OF WORK)

EXHIBIT M-3

DESIGN GROUP MEMBERS
(O-6 RENOVATION SCOPE OF WORK)

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[SEE ATTACHED]

EXHIBIT O

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to in this Exhibit P as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the Wage Decision applicable to (i) the Marine Palms New Build Site and the O-6 Renovation Site attached hereto as Appendix P-1, and (ii) the Phase VI Stuart Mesa Site, attached hereto as Appendix P-2, and the Payrolls and Basic Records provision. The provisions of the Davis-Bacon Act, as implemented by Federal Acquisition Regulation (FAR) 52.222-6, applicable to this Agreement are provided below.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder to Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. **Davis-Bacon Act (Jul 2005)**

(a) *Definition.*—"Site of the work"—

(1) Means--

(i) The *primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall

be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the: Wage and Hour Division, Employment Standards Administration,

U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (e) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION
(MARINE PALMS NEW BUILD SITE AND O-6 RENOVATION SITE)

[SEE ATTACHED]

APPENDIX 6A

DAVIS-BACON WAGE DETERMINATION

Appendix 6 contains Davis-Bacon Wage Determination as of 1/18/2008 for **San Bernardino County**, California. It is the offerors responsibility to obtain and incorporate updated information at http://www.wdol.gov/ for their submittal. The DoN upon request will provide updated information. For purposes of closing and the initial development period for this phase of the CPQH project, the Offeror should use the rates at the time of IFP submittal.

GENERAL DECISION: CA20070028 01/18/2008 CA28

Date: January 18, 2008
General Decision Number: CA20070028 01/18/2008

Superseded General Decision Number: CA20030028

State: California

Construction Type: Residential

Counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties in California.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/09/2007
1	02/16/2007
2	02/23/2007
3	03/16/2007
4	03/23/2007
5	04/06/2007
6	04/20/2007
7	06/08/2007
8	06/22/2007
9	07/06/2007
10	07/13/2007
11	07/20/2007
12	08/03/2007
13	08/17/2007
14	08/24/2007
15	09/21/2007
16	10/12/2007
17	10/26/2007

18	11/09/2007
19	11/23/2007
20	12/07/2007
21	01/18/2008

ASBE0005-002 08/07/2007

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	$ 37.01	10.84
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	$ 20.76	10.23

ASBE0005-004 08/07/2006

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....	$ 19.55	6.38

BRCA0004-001 05/01/2007

	Rates	Fringes
Bricklayer; Marble Setter		
Los Angeles County.....	$ 34.07	10.00
Orange County.....	$ 32.83	9.20
Riverside & San Bernardino Counties.....	$ 32.69	9.10
Ventura County.....	$ 31.76	9.50

BRCA0004-004 11/01/2007

IMPERIAL

	Rates	Fringes

BRICKLAYER; MARBLE SETTER.....$ 34.00 11.70

BRCA0004-009 05/01/2007

SAN LUIS OBISPO AND SANTA BARBARA COUNATIES

	Rates	Fringes
Bricklayer; Marble Setter.....	$ 33.60	8.30

BRCA0018-001 06/01/2007

	Rates	Fringes
MARBLE FINISHER.....	$ 24.02	8.41
TILE FINISHER.....	$ 19.82	7.51

BRCA0018-002 08/01/2007

SAN LUIS OBISPO AND SANTA BARBARA

	Rates	Fringes
Tile Layer.....	$ 29.26	8.17

BRCA0018-003 06/01/2007

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO & VENTURA

	Rates	Fringes
Tile Layer.....	$ 30.55	11.62

BRCA0018-010 10/08/2007

	Rates	Fringes
TERRAZZO FINISHER.....	$ 25.54	8.62
TERRAZZO WORKER/SETTER.....	$ 32.63	9.41

CARP0409-003 07/01/2007

	Rates	Fringes
Drywall		
(1) Work on Wood-Framed Single Family Homes, and Wood-Framed Apartment Buildings up to and including 4 Stories		
Drywall Installer/Lather...	$ 21.00	8.82
Stocker/Scrapper.....	$ 10.00	6.56
(2) All other Work		

Drywall Installer/Lather...	$ 35.51	9.17
Stocker/Scrapper.....	$ 10.00	6.56

CARP0409-004 07/01/2007

Work on wood frame single family homes and apartments up to and including 4 stories:

	Rates	Fringes
CARPENTER		
Cabinet installer.....	$ 24.32	9.17
Fence builder.....	$ 25.94	9.17
Framer & finish carpenter...	$ 28.55	9.17
Insulation installer.....	$ 18.00	8.82
Roof loader of shingles.....	$ 16.32	8.82
Shingler.....	$ 23.32	8.77
Subterranean garage concrete construction and carpenters performing on grade slab concrete construction.....	$ 24.13	9.17

CARP0409-009 01/01/2007

	Rates	Fringes
Modular Furniture Installer.....	$ 18.25	7.16

ELEC0011-003 11/22/2005

LOS ANGELES

	Rates	Fringes
ELECTRICIAN (does not include fire alarm, hold-up alarm, burglar alarm and surveillance systems).....	$ 20.20	6.34

ELEC0011-009 11/27/2006

COMMUNICATIONS AND SYSTEMS WORK

	Rates	Fringes
Communications System		
Installer.....	$ 24.43	3%+7.60
Technician.....	$ 26.23	3%+7.60

SCOPE OF WORK:
Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational,

security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, microwave transmission, multi-media, multiplex, nurse call systems, radio page, burglar alarms and fire alarm (see last paragraph below).

Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems.

Fire alarm work shall be performed at the current inside electrician total cost package.

ELEC0413-002 03/01/2007

SANTA BARBARA COUNTY

	Rates	Fringes
Electricians.....	$ 16.50	3%+0.50

WORK AT VANDENBERG AFB: $3.75 additional per hour.

ELEC0440-002 11/28/2005

RIVERSIDE

	Rates	Fringes
ELECTRICIAN.....	$ 17.00	3%+6.65

ELEC0441-002 06/04/2007

ORANGE

	Rates	Fringes
ELECTRICIAN.....	$ 22.47	3%+3.35

ELEC0477-003 06/01/2005

SAN BERNARDINO

	Rates	Fringes
ELECTRICIAN.....	$ 19.00	3%+7.26

ELEC0569-003 12/01/2006

IMPERIAL

	Rates	Fringes
ELECTRICIAN		
1 to 3 Stories	$ 21.00	3%+2.55
4 Stories		
Electrical subcontracts of $500,000 or less	$ 32.45	3%+11.08
Electrical subcontracts over $500,000	$ 35.45	3%+11.08

ELEC0639-002 03/01/2007

SAN LUIS OBISPO

	Rates	Fringes
ELECTRICIAN	$ 17.00	3%+4.50

FOOTNOTES: Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance of fifty (50) feet to ninety (90) feet: to be paid time and one-half.

Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance over ninety (90) feet: to be paid double the regular straight time rate of pay.

ELEC0952-002 01/01/2007

VENTURA

	Rates	Fringes
Cable splicer		
All work within 32 road miles or less from the nearest base point	$ 36.90	3%+13.25
ELECTRICIAN		
All work within 32 road miles or less from the nearest base point	$ 33.55	3%+13.25

ALL WORK MORE THAN 32 ROAD MILES FROM NEAREST BASE POINT: Add $5.00 to the basic hourly rate. BASE POINTS: the main Post Office in the cities of Camarillo, Oak View, Oxnard, Santa Paula and Ventura.

ELEV0008-004 01/01/2006

SAN LUIS OBISPO

	Rates	Fringes
ELEVATOR MECHANIC.....	$ 49.005	13.265

FOOTNOTE: Vacation Pay: 8% with 5 or more years of service, 6% for 6 months to 5 years service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

ELEV0018-004 01/01/2007

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SANTA BARBARA AND VENTURA

	Rates	Fringes
ELEVATOR MECHANIC.....	$ 41.265	14.885

FOOTNOTE: Employer contributes 8% basic hourly rate for over 5 years service and 6% basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day.

ENGI0012-001 07/09/2007

	Rates	Fringes
Power equipment operator - cranes, piledriving, hoisting		
GROUP 1.....	$ 35.00	15.82
GROUP 2.....	$ 35.78	15.82
GROUP 3.....	$ 36.07	15.82
GROUP 4.....	$ 36.21	15.82
GROUP 5.....	$ 36.43	15.82
GROUP 6.....	$ 36.54	15.82
GROUP 7.....	$ 36.66	15.82
GROUP 8.....	$ 36.83	15.82
GROUP 9.....	$ 37.00	15.82
GROUP 10.....	$ 38.00	15.82
GROUP 11.....	$ 39.00	15.82
GROUP 12.....	$ 40.00	15.82
GROUP 13.....	$ 41.00	15.82
Power Equipment Operator		
GROUP 1.....	$ 33.65	15.82
GROUP 2.....	$ 34.43	15.82
GROUP 3.....	$ 34.72	15.82
GROUP 4.....	$ 36.21	15.82
GROUP 5.....	$ 37.31	15.82
GROUP 6.....	$ 36.43	15.82

GROUP 7	$ 37.53	15.82
GROUP 8	$ 36.54	15.82
GROUP 9	$ 37.64	15.82
GROUP 10	$ 36.66	15.82
GROUP 11	$ 37.76	15.82
GROUP 12	$ 36.83	15.82
GROUP 13	$ 36.93	15.82
GROUP 14	$ 36.96	15.82
GROUP 15	$ 37.04	15.82
GROUP 16	$ 37.16	15.82
GROUP 17	$ 37.33	15.82
GROUP 18	$ 37.43	15.82
GROUP 19	$ 37.54	15.82
GROUP 20	$ 37.66	15.82
GROUP 21	$ 37.83	15.82
GROUP 22	$ 37.93	15.82
GROUP 23	$ 38.04	15.82
GROUP 24	$ 38.16	15.82
GROUP 25	$ 38.33	15.82

FOOTNOTES: Work at Point Arguello and Vandenburg Air Force Base: $3.75 per hour additional. Workers required to suit up and work in a hazardous materialenvironment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine oeprator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (side steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator;

Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite

work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar

and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar

types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid,

Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and

including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

IRON0002-001 07/01/2007

	Rates	Fringes
IRONWORKER		
Fence Erector	$ 29.62	20.915
Ornamental, Reinforcing and Structural	$ 30.51	20.915

PREMIUM PAY:

$3.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$2.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$1.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0300-002 07/01/2007

	Rates	Fringes
Brick Tender	$ 25.47	13.25

LABO0300-004 07/01/2007

Residential, 4 Stories

	Rates	Fringes
LABORER		
GROUP 1	$ 24.63	13.25
GROUP 2	$ 25.18	13.25
GROUP 3	$ 25.73	13.25
GROUP 4	$ 27.28	13.25
GROUP 5	$ 27.63	13.25

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; post hole digger (manual);Railroad maintenance, repair track person and road beds;Streetcar and railroad construction track laborers; Rigging andsignaling; Scaler; Slip form raiser; Slurry seal crew (mixer operator, applicator operator, squeegee person, shuttle person, top person), filling of cracks by any method on any surface; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asbestos abatement; Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curb, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot

tender); Septic tank digger and installer (lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; operation of remote controlled robotic tools in connection with Laborer's work; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Power post hole digger; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Any worker exposed to raw sewage; Asphalt raker, lute person, ironer, asphalt dump person and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt-rubber distributor boot person; Laser beam in connection with laborers' work; Over-size concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in theditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic,conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting,Porta Shot-Blast; Traffic lane closure, Certified.

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing;

Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all types of mechanical drills without regard to the form of motive power; Toxic waste removal; Boring system electronic tracking locator

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LABO0300-006 08/01/2007

	Rates	Fringes
Laborers: (1 to 3 Stories)		
Plaster Clean-Up Laborer....	$ 22.90	13.20
Plaster Tender.....	$ 25.45	13.20
Laborers: (4 Stories)		
Plaster Clean-up Laborer....	$ 24.90	13.20
Plaster Tender.....	$ 27.45	13.20

Work at Military Bases - $3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, George AFB, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

LABO0300-007 07/01/2004

Residential, 3 Stories and under

	Rates	Fringes
Laborers		
(1) Cleanup, Fencing (Chain Link or Wood), Landscaping.....	$ 19.07	8.67
(2) All Other Work.....	$ 20.07	8.67

LABO0882-003 01/01/2007

	Rates	Fringes
Asbestos Removal Laborer.....	$ 24.15	11.75

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos containing material and toxic waste (including lead abatement and any other toxic material), encapsulation, enclosure and disposal of asbestos containing materials and toxic waste(including lead abatement and any other toxic materials) by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2007

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	$ 25.44	8.81
(2) Vehicle Operator/Hauler.	$ 25.61	8.81
(3) Horizontal Directional Drill Operator.....	$ 27.46	8.81
(4) Electronic Tracking Locator.....	$ 29.46	8.81
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	$ 26.39	11.47
GROUP 2.....	$ 27.69	11.47
GROUP 3.....	$ 29.70	11.47
GROUP 4.....	$ 31.44	11.47

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-005 07/01/2007

	Rates	Fringes
PAINTER (including lead abatement)		
Imperial, Los Angeles, Orange, Riverside & San Bernardino		
(1) Repaint	$ 25.20	8.14
(2) All other work	$ 28.47	8.14
San Luis Obispo, Santa Barbara & Ventura		
(1) Repaint	$ 22.25	8.14
(2) All other work	$ 26.54	8.14

PAIN0036-011 10/01/2007

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA COUNTIES

	Rates	Fringes
DRYWALL FINISHER/TAPER	$ 18.00	6.65

PAIN0036-014 10/01/2007

IMPERIAL

	Rates	Fringes
GLAZIER	$ 30.00	12.10

PAIN0036-018 06/01/2007

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SANTA BARBARA AND VENTURA

	Rates	Fringes
GLAZIER	$ 33.30	13.53

FOOTNOTE: Additional $1.25 per hour for work in a condo, from the third (3rd) floor and up. Additional $1.25 per hour for work on the outside of the building from a swing stage or any suspended contrivance, from the ground up.

PAIN0036-020 09/01/2007

IMPERIAL

	Rates	Fringes
SOFT FLOOR LAYER	$ 23.17	10.85

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* PAIN0169-007 01/01/2008

SAN LUIS OBISPO

	Rates	Fringes
GLAZIER	$ 28.28	14.35

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* PAIN1247-003 01/01/2008

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
SOFT FLOOR LAYER	$ 29.85	8.49

PLAS0200-002 01/01/2005

IMPERIAL, KERN, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
PLASTERER		
1 - 3 stories	$ 25.29	7.46
4-stories	$ 28.29	7.46

PLAS0500-003 07/01/2007

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 28.00	16.45

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* PLUM0016-011 01/01/2008

	Rates	Fringes
PLUMBER/PIPEFITTER		
Residential	$ 27.36	11.97

PLUM0250-001 01/02/2006

LOS ANGELES AND ORANGE

	Rates	Fringes
REFRIGERATION MECHANIC		
Refrigeration Fitter	$ 33.30	13.95

ROOF0036-001 08/01/2007

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Roofer	$ 26.61	5.57

FOOTNOTE: Pitch premium: Work on which employees are exposed to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive $1.75 per hour "pitch premium" pay.

ROOF0045-003 08/01/2007

IMPERIAL

	Rates	Fringes
Roofer	$ 22.70	6.38

SFCA0669-005 04/01/2006

AREA 1: IMPERIAL COUNTY; LOS ANGELES COUNTY (does not include the city of Pomona, Catalina Island, and that part of Los Angeles County within 25 miles of the city limits of Los Angeles); ORANGE COUNTY (does not include Catalina Island; San Clemente Island; City of Santa Ana; and remainder of Orange County within 25 miles of the city limits of Los Angeles); RIVERSIDE COUNTY; AND SAN BERNARDINO COUNTY (does not include the northern part of City of Chino, or the cities of Montclair and Ontario)

AREA 2: SAN LUIS OBISPO, SANTA BARBARA COUNTIES, VENTURA (does not include Port Hueneme, Port Mugu, the city of Santa Paula, and that part of Ventura County within 25 miles of the city limits of Los Angeles) COUNTIES

	Rates	Fringes
SPRINKLER FITTER		
Area 1	$ 22.50	1.79
Area 2	$ 22.61	1.79

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* SFCA0709-002 01/01/2008

LOS ANGELES COUNTY (the city of Pomona, Catalina Island, and that part of Los Angeles County within 25 miles of the city limits of Los Angeles); ORANGE COUNTY (San Clemente Island, the city of Santa Ana, and that part of Orange County within 25 miles of the city limits of Los Angeles); SAN BERNARDINO COUNTY (the northern part of the city of Chino, and the cities of Montclair and Ontario); VENTURA COUNTY (Port Hueneme, Port Mugu, the city of Santa Paula, and that part of Ventura County within 25 miles of the city limits of Los Angeles)

	Rates	Fringes
SPRINKLER FITTER	$ 25.48	10.20

SHEE0105-001 08/01/2007

AREA 1: LOS ANGELES COUNTY (South of a straight line drawn between gorman and Big Pines, excluding the area South of Imperial Highway East of the Los Angeles River, excluding the cities of Long Beach, Claremont, and Pomona, excluding Catalina Island)

AREA 2: LOS ANGELES (Remainder), ORANGE, RIVERSIDE & SAN BERNARDINO COUNTIES

Work on general sheet metal and heating and air conditioning on single family dwellings, multiple family dwellings, track homes and apartment buildings individually conditioned by separate and independent units or systems

	Rates	Fringes
Sheet metal worker		
AREA 1	$ 21.65	5.41
AREA 2	$ 28.29	13.51

SHEE0206-003 07/01/2007

IMPERIAL

	Rates	Fringes
Sheet Metal (Technician)	$ 22.71	4.70
Sheet metal worker	$ 30.66	14.35

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

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SHEE0273-001 08/01/2007

SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Sheet metal worker.....	$ 34.04	14.50

HOLIDAYS: New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Indepdendence Day, Labor Day, Veterans Day,Thankisgiving Day & Friday after, Christmas Day

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TEAM0011-001 07/01/2007

	Rates	Fringes
Truck drivers:		
GROUP 1.....	$ 25.44	17.39
GROUP 2.....	$ 25.59	17.39
GROUP 3.....	$ 25.72	17.39
GROUP 4.....	$ 25.91	17.39
GROUP 5.....	$ 25.94	17.39
GROUP 6.....	$ 25.97	17.39
GROUP 7.....	$ 26.22	17.39
GROUP 8.....	$ 26.47	17.39
GROUP 9.....	$ 26.67	17.39
GROUP 10.....	$ 26.97	17.39
GROUP 11.....	$ 27.47	17.39
GROUP 12.....	$ 27.90	17.39

WORK ON ALL MILITARY BASES: $3.00 PER HOUR ADDITIONAL

IMPERIAL COUNTY (El Centro); LOS ANGELES COUNTY (Edwards AFB); AND SAN BERNARDINO COUNTY (Edwards AFB, Fort Irwin, George AFB, Marine Corps Logistic Base at Nebo & Yermo, Twenty-Nine Palms Base)

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person ($0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work;

Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - $1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter

* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

APPENDIX P-2

DAVIS BACON WAGE DETERMINATION
(PHASE VI STUART MESA SITE)

[SEE ATTACHED]

APPENDIX 6B

DAVIS-BACON WAGE DETERMINATION

Appendix 6 contains Davis-Bacon Wage Determination as of 1/18/2008 for **San Diego County**, California. It is the offerors responsibility to obtain and incorporate updated information at http://www.wdol.gov/ for their submittal. The DoN upon request will provide updated information. For purposes of closing and the initial development period for this phase of the CPQH project, the Offeror should use the rates at the time of IFP submittal.

GENERAL DECISION: **CA20070001** 01/18/2008 CA1

Date: January 18, 2008
General Decision Number: **CA20070001** 01/18/2008

Superseded General Decision Number: CA20030001

State: California

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/09/2007
1	02/16/2007
2	02/23/2007
3	03/23/2007
4	04/06/2007
5	04/20/2007
6	06/22/2007
7	07/06/2007
8	07/13/2007
9	08/03/2007
10	08/17/2007
11	08/24/2007
12	09/21/2007
13	09/28/2007
14	10/12/2007

15	10/26/2007
16	11/09/2007
17	11/23/2007
18	12/07/2007
19	01/18/2008

ASBE0005-002 08/07/2007

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	$ 37.01	10.84
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	$ 20.76	10.23

ASBE0005-004 08/07/2006

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....	$ 19.55	6.38

BOIL0092-003 10/01/2006

	Rates	Fringes
BOILERMAKER.....	$ 34.34	18.11

BRCA0004-008 11/01/2007

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	$ 30.00	11.70

BRCA0018-004 06/01/2007

	Rates	Fringes

MARBLE FINISHER	$ 24.02	8.41
TILE FINISHER	$ 19.82	7.51
Tile Layer	$ 30.55	11.62

BRCA0018-010 10/08/2007

	Rates	Fringes
TERRAZZO FINISHER	$ 25.54	8.62
TERRAZZO WORKER/SETTER	$ 32.63	9.41

CARP0409-002 01/01/2007

	Rates	Fringes
Diver		
(1) Wet	$ 603.85	8.82
(2) Standby	$ 301.92	8.82
(3) Tender	$ 293.92	8.82

Amounts in "Rates' column are per day

CARP0409-008 01/01/2007

	Rates	Fringes
Modular Furniture Installer	$ 18.25	7.16

CARP0547-001 07/01/2007

	Rates	Fringes
CARPENTER		
(1) Bridge	$ 35.44	9.20
(2) Commercial Building	$ 30.71	9.20
(3) Heavy & Highway	$ 35.31	9.20
(4) Residential / Light Commercial	$ 23.49	9.20
MILLWRIGHT	$ 35.81	9.20
PILEDRIVERMAN	$ 35.44	9.20

CARP0547-002 07/01/2007

	Rates	Fringes
Drywall		
(1) Work on wood framed construction of single family residences, apartments or condominiums under four stories		
Drywall Installer/Lather	$ 21.00	7.82
Drywall Stocker/Scrapper	$ 11.00	5.56
(2) All other work		

Drywall Installer / Lather.	$ 26.26	8.17
Drywall Stocker/Scrapper...	$ 11.00	5.56

ELEC0569-001 12/01/2006

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer.....	$ 37.35	3%+11.08
Electrician.....	$ 36.51	3%+11.08
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer.....	$ 33.20	3%+11.08
Electrician.....	$ 32.45	3%+11.08

ELEC0569-005 12/01/2005

	Rates	Fringes
Sound & Communications		
Sound Technician.....	$ 21.65	3%+9.08
Soundman.....	$ 16.24	3%+7.51

SOUND TECHNICIAN: Terminating, operating and performing final check-out

SOUNDMAN: Wire-pulling, splicing, assembling and installing devices

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

ELEC0569-006 12/01/2005

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
Traffic signal, street light and underground work		
Utility Technician #1	$ 18.15	3%+7.17
Utility Technician #2	$ 16.50	3%+7.17

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

ELEC0569-008 12/01/2005

	Rates	Fringes
ELECTRICIAN (Residential, 1-3 Stories)	$ 21.00	3%+2.55

ELEC1245-001 06/01/2007

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer	$ 41.02	12.01
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), and overhead and underground distribution line equipment)	$ 33.24	11.00
(3) Groundman	$ 25.42	10.76
(4) Powderman	$ 37.16	11.15

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

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ELEV0018-001 01/01/2007

	Rates	Fringes
ELEVATOR MECHANIC	$ 41.265	14.885

FOOTNOTE:
Vacation Pay: 8% with 5 or more years of service, 6% for 6 months to 5 years service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

ENGI0012-003 07/09/2007

	Rates	Fringes
POWER EQUIPMENT OPERATOR (All Other Work)		
GROUP 1	$ 33.65	15.82
GROUP 2	$ 34.43	15.82
GROUP 3	$ 34.72	15.82
GROUP 4	$ 36.21	15.82
GROUP 5	$ 37.31	15.82
GROUP 6	$ 36.43	15.82
GROUP 7	$ 37.53	15.82
GROUP 8	$ 36.54	15.82
GROUP 9	$ 37.64	15.82
GROUP 10	$ 36.66	15.82
GROUP 11	$ 37.76	15.82
GROUP 12	$ 36.83	15.82
GROUP 13	$ 36.93	15.82
GROUP 14	$ 36.96	15.82
GROUP 15	$ 37.04	15.82
GROUP 16	$ 37.16	15.82
GROUP 17	$ 37.33	15.82
GROUP 18	$ 37.43	15.82
GROUP 19	$ 37.54	15.82
GROUP 20	$ 37.66	15.82
GROUP 21	$ 37.83	15.82
GROUP 22	$ 37.93	15.82
GROUP 23	$ 38.04	15.82
GROUP 24	$ 38.16	15.82
GROUP 25	$ 38.33	15.82
POWER EQUIPMENT OPERATOR (Cranes, Piledriving & Hoisting)		
GROUP 1	$ 35.00	15.82
GROUP 2	$ 35.78	15.82
GROUP 3	$ 36.07	15.82
GROUP 4	$ 36.21	15.82
GROUP 5	$ 36.43	15.82
GROUP 6	$ 36.54	15.82
GROUP 7	$ 36.66	15.82
GROUP 8	$ 36.83	15.82
GROUP 9	$ 37.00	15.82

GROUP 10	$ 38.00	15.82
GROUP 11	$ 39.00	15.82
GROUP 12	$ 40.00	15.82
GROUP 13	$ 41.00	15.82
POWER EQUIPMENT OPERATOR (Tunnel Work)		
GROUP 1	$ 35.50	15.82
GROUP 2	$ 36.28	15.82
GROUP 3	$ 36.57	15.82
GROUP 4	$ 36.71	15.82
GROUP 5	$ 36.93	15.82
GROUP 6	$ 37.04	15.82
GROUP 7	$ 37.16	15.82

FOOTNOTES:

PREMIUM PAY of $3.75 per hour shall be paid on all power equipment operator work at Camp Pendleton, Point Arguello, and Vandenburg AFB.

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types -

drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger

or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types);

Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator

(over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGI0012-004 08/01/2006

	Rates	Fringes
Power equipment operators: (DREDGING)		
(1) Leverman	$ 39.65	15.30
(2) Dredge dozer	$ 35.18	15.30
(3) Deckmate	$ 35.07	15.30

(4) Winch operator (stern winch on dredge).....$ 34.52 15.30
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....$ 33.98 15.30
(6) Barge Mate.....$ 34.59 15.30

IRON0002-004 07/01/2007

	Rates	Fringes
Ironworkers:		
Fence Erector	$ 29.62	20.915
Ornamental, Reinforcing and Structural	$ 30.51	20.915

PREMIUM PAY:

$3.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$2.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$1.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0089-001 07/01/2007

	Rates	Fringes
LABORER (BUILDING and all other Residential Construction)		
Group 1	$ 24.27	11.80
Group 2	$ 24.92	11.80
Group 3	$ 25.60	11.80
Group 4	$ 26.75	11.80
Group 5	$ 27.16	11.80
LABORER (RESIDENTIAL CONSTRUCTION - See definition below)		
(1) Laborer	$ 21.30	10.13

(2) Cleanup, Landscaping,
Fencing (chain link or
wood).....$ 21.07 10.13

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filing
of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demoliton); Guinea chaser; Headboard man-asphlt; Laborer,
packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riiprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including
drilling of same); Hydro seeder and similar type; Impact wrench, mult-plate; Kettlemen, potmen and mean applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying

means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air blasting, come-along, and similar mechanicl tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and inclduing rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scaarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, apshalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of oepration, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the
conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all pwder and explosives of whatever type, regardless of method used for such loading and placing; Driller-
all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LABO0089-002 11/01/2007

	Rates	Fringes
LABORER: Mason Tender.....	$ 25.00	11.54

LABO0089-004 07/01/2007

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes

Laborers:

GROUP 1	$ 24.39	11.80
GROUP 2	$ 24.85	11.80
GROUP 3	$ 25.26	11.80
GROUP 4	$ 26.10	11.80
GROUP 5	$ 27.97	11.80

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber,Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/'2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-klold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket jlints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer

- Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter, Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work. High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting,m makeing of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prfefabricated Manhole Installer, Sandblast Nozzleman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

LABO0300-008 08/01/2007

	Rates	Fringes
Plaster Clean-up Laborer.....	$ 24.90	13.20
Plasterer tender.....	$ 27.45	13.20

Work at Military Bases - $3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, George AFB,

Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

LAB00882-001 01/01/2007

	Rates	Fringes
Asbestos Removal Laborer.....	$ 24.15	11.75

SCOPE OF WORK: includes site mobilization, initial site clean-up, site preparation, removal of asbestos-containing material and toxic waste (including lead abatement and any other toxic materials), encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste (including lead abatement and any other toxic materials) by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers, and assembly of decontamination stations.

LAB01184-001 07/01/2007

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	$ 25.44	8.81
(2) Vehicle Operator/Hauler.	$ 25.61	8.81
(3) Horizontal Directional Drill Operator.....	$ 27.46	8.81
(4) Electronic Tracking Locator.....	$ 29.46	8.81
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	$ 26.39	11.47
GROUP 2.....	$ 27.69	11.47
GROUP 3.....	$ 29.70	11.47
GROUP 4.....	$ 31.44	11.47

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both

conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-001 07/01/2007

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Repaint.....	$ 25.20	8.14
(2) All Other Work.....	$ 28.47	8.14

REPAINT of any structure with the exception of work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities, tenant improvement work not included in conjunction with the construction of the building and all repainting of tenant improvement projects.

PAIN0036-010 10/01/2007

	Rates	Fringes
DRYWALL FINISHER/TAPER		
(1) Building & Heavy Construction.....	$ 23.89	9.67
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories).....	$ 18.00	6.65

PAIN0036-012 10/01/2007

	Rates	Fringes
GLAZIER	$ 32.55	12.10

PAIN0036-019 09/01/2007

	Rates	Fringes
SOFT FLOOR LAYER	$ 23.17	10.85

PLAS0200-005 01/01/2005

	Rates	Fringes
PLASTERER	$ 24.03	7.12

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS BASE, IMPERIAL BEACH NAVAL AIR STATION: $3.00 additional per hour.

PLAS0500-001 06/28/2006

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
GROUP 1	$ 23.79	6.33
GROUP 2	$ 26.24	6.78
GROUP 3	$ 28.92	7.08

CEMENT MASONS - work inside the building line, meeting the following criteria:

GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

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* PLUM0016-006 01/01/2008

	Rates	Fringes
PLUMBER, PIPEFITTER, STEAMFITTER		
(1) Work on strip malls, light commercial, tenant improvement and remodel work	$ 26.21	13.54
(2) Work on new additions and remodeling of commercial buildings,		

bars, restaurants, and
stores not to exceed 5,000
sq. ft. of floor space.....$ 32.84 14.93
(3) All other work.....$ 33.86 15.91
(4) Camp Pendleton.....$ 38.36 15.91

13.54

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* PLUM0016-011 01/01/2008

	Rates	Fringes
PLUMBER/PIPEFITTER		
Residential.....	$ 27.36	11.97

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* PLUM0345-001 01/01/2008

	Rates	Fringes
PLUMBER		
Landscape/Irrigation Fitter.	$ 25.18	12.66
Sewer & Storm Drain Work....	$ 22.99	14.79

ROOF0045-001 08/01/2007

	Rates	Fringes
ROOFER.....	$ 22.70	6.38

SFCA0669-001 01/01/2007

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	$ 29.50	13.40

SHEE0206-001 07/01/2007

	Rates	Fringes
Sheet metal worker		
Camp Pendleton.....	$ 32.66	14.35
Remainder of San Diego County.....	$ 30.66	14.35
Sheet Metal		
Sheet Metal Technician.....	$ 22.71	4.70

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and

motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

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TEAM0036-001 07/01/2007

	Rates	Fringes
Truck drivers:		
GROUP 01	$ 25.44	14.99
GROUP 02	$ 25.59	14.99
GROUP 03	$ 25.72	14.99
GROUP 04	$ 25.91	14.99
GROUP 05	$ 25.94	14.99
GROUP 06	$ 25.97	14.99
GROUP 07	$ 26.22	14.99
GROUP 08	$ 26.47	14.99
GROUP 09	$ 26.67	14.99
GROUP 10	$ 26.97	14.99
GROUP 11	$ 27.47	14.99
GROUP 12	$ 27.90	14.99

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Warehouseman and Teamster

GROUP 2: 2 axle vehicle or Combination, Traffic Control Car, Pilot Car, Truck Mounted Power Broom

GROUP 3: 3-Axle vehicle or Combination, Bootman, Cement Distribution Truck, Fuel Truck, 2-axle Water Truck, Dump Truck and Articulating under 16 yd water level, Erosion Control Driver

GROUP 4: Transit Mix under 3 yd, Dumpcrete under 6.5 yd water level

GROUP 5: Water Truck 3 axles or more, Working Truck Driver, Truck Greaser, Tireman $0.50 additional, Pipeline & Utility Working Truck Driver, Including Winch Truck and Plastic Fusion, Slurry Truck

GROUP 6: Mix Truck 3 yd or more, Dumpcrete 6.5 yd & over Water Level, 4-Axle or more vehicle or Combination, Oil

Spreader, Dump Truck & Articulating 16 yd to 25 yd water level

GROUP 7: A-Frame, Swedish Crane or similar, Forklift Driver, Ross Carrier

GROUP 8: Dump Truck and Articulating 25 yd to 49 yd water level, Truck Repairmen, Water Pull Single Engine

GROUP 9: Truck Repairman Welder, Low Bed 9 axles or over

GROUP 10: Dump Truck and Articulating 50 yd or more water level

GROUP 11: Water Truck over 12,000 gallons 2 axle, Water Pull/Attachments, Winch Truck $0.25 additional when operating winch or similar special attachments, Boom Trucks 17K and below

GROUP 12: Boom Trucks over 17K

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour

Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

EXHIBIT Q

[SEE ATTACHED]

[redacted]

Attachment A

Attachment B-1

EXHIBIT G-12

COLEVILLE UTILITY UPGRADE DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

COLEVILLE UTILITY UPGRADE DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

as Design/Builder

Dated as of June 10, 2010

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COLEVILLE UTILITY UPGRADE DESIGN/BUILD AGREEMENT

This Coleville Utility Upgrade Design/Build Agreement (this "**Agreement**") dated as of June 10, 2010 and effective for all purposes as of June 10, 2010 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "Additional Services Fee" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.2 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.3 "**Agreement**" means this Coleville Utility Upgrade Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.4 "**Amended and Restated Ground Lease**" shall have the meaning set forth in the Operating Agreement.

1.5 "**Amended and Restated Indenture**" shall have the meaning set forth in the Operating Agreement.

1.6 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the applicable Site and/or the Work.

1.7 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.8 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.9 "**Certificate of Substantial Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.10 "**Certificate of Final Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.11 "**Change Directive**" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the [redacted] Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.12 "**Change Order**" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust [redacted]he Schedule, and which shall constitute a Modification. [redacted]Schedule may be changed only by Change Order.

1.13 "**Change Proposal**" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.14 "**Claims**" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.15 "**Company"** means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.16 "**Company Event of Default**" shall have the meaning set forth in Section 12.3 hereof.

1.17 "**Company Indemnified Parties**" means the Company, its members, agents, partners and employees.

1.18 "**Construction Agreement**" means that certain Coleville Utility Upgrade Construction Agreement between the Contractor and the Design/Builder to be executed in connection with the Construction Modification, as such construction agreement is amended and modified from time to time.

[redacted]

1.20 "**Construction Consultant**" will be identified as part of the Construction Modification.

1.21 "**Construction Documents**" means the plans and specifications prepared by the Engineer or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Construction Documents must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.22 "**Construction Modification**" shall have the meaning set forth in Section 2.1.2.

1.23 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that a Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.24 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.25 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.26 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.27 "**Contract Documents**" means this Agreement, the Construction Modification (if any), other modifications and amendments to this Agreement, and the Construction Documents prepared by the Engineer and approved by the Company, all of which form the entire integrated agreement between the Company and the Design/Builder.

1.28 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Design Work and, as set forth in the Construction Modification, for Substantial Completion of the Work.

1.29 "**Contractor**" means or such other construction company selected by the Design/Builder and reasonably approved by the Company.

1.30 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D.

1.31 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.32 "**Credit Provider**" shall have the meaning as set forth in the Operating Agreement.

1.33 "**D/B Submission**" shall have the meaning set forth in Exhibit F attached hereto.

1.34 "**Day**" **or** "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "**Business Day**" or "**Business Days**" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of California are open for business.

1.35 "**Design/Builder**" means

1.36 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.37 "**Design/Builder Indemnified Parties**" means the Design/Builder, the Contractor and the Engineer, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.38 "**Design/Builder Initiated Change Orders**" means Design/Builder initiated Change Orders other than any Force Majeure Change Orders.

1.39 "**Design/Builder's Proposal**" shall have the meaning set forth in Section 2.1.2.

1.40 "**Design Engineer Agreement**" means that certain Coleville Design Engineer Agreement between the Engineer and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.41 "**Design Group**" means all engineers having a contract with the Design/Builder or Engineer to furnish design or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Engineer is a member of the Design Group where the context requires.

1.42 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.43 "**Design Phase**" means the period set forth in the Schedule commencing on the Effective Date and ending upon the date the Company approves the Construction Documents.

1.44 "**Design Work**" means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Engineer, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.45 "**DoN**" means the United States of America, Department of the Navy.

1.46 **"Effective Date"** shall have the meaning set forth in the first paragraph of this Agreement.

1.47 "**Engineer**" means [redacted] or such other entity retained by the Design/Builder to serve as the engineer for the Project.

1.48 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.49 **"Facility Engineering and Acquisition Division" or "FEAD"** shall have the meaning set forth in Section 2.16.1 hereof.

1.50 "**Fee**" means [redacted]

1.51 "**Final Completion" or "Finally Complete**" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.52 "**Final Schedule**" means the schedule for completion of the Final Scope of Work.

1.53 "**Final Work**" or "**Final Scope of Work**" means all labor, materials and services expected to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, including the Scope of Work Submittal Documents approved by the Company and the Design/Builder's Proposal reflected in the executed Construction Modification, if any.

1.54 "**First Mortgage Loan Documents**" shall have the meaning as set forth in the Operating Agreement.

1.55 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable

precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.57 "**Governmental Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.58 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.59 "**Hourly Rates for Additional Services**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.60

1.61 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.62 "**Initial Schedule**" means the schedule for completion of the Scope of Work Submittal Documents attached hereto as Exhibit H.

1.63 "**Initial Work**" or "**Initial Scope of Work**" means all labor, materials and services expected to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents existing as of the Effective Date, as more fully described in Section 2.1.2 and Exhibit A hereto.

1.64 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4 hereof.

1.65 "**Managing Member**" means which is the managing member of the Company.

1.66 "**Mobilization Plan"** shall have the meaning set forth in Section 2.11 hereof.

1.67 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.68 "**Operating Agreement**" means that certain Fourth Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of January 15, 2010, as amended from time to time.

1.69 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.70 "**Overhead**" means

1.71 "**Party**" **or** "**Parties**" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.72 "**Payment and Performance Bonds**" means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work at the Site, including payment for all materials and labor furnished or supplied in connection with such Construction Work, by the Contractor, as required under the applicable Construction Agreement.

1.73 "**Product Data**" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.74 "**Project**" means the utility facilities located on the Site, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.75 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.76 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.77 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.79 "**Schedule**" means (1) prior to the Construction Modification, the Initial Schedule, or (2) as to the Work described in the Construction Modification, the Final Schedule.

1.80 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.81 "**Scope of Work Submittal Documents**" means Construction Documents prepared to approximately 95% completion.

1.82 "**Self-Performed Work**" shall have the meaning set forth in Section 8.3 hereof.

1.83 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.84 "**Shop Drawings**" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.85 "**Site**" means the property identified on Exhibit I attached hereto, and any other real property on which the Work will be performed.

1.86 "**Subcontract**" means an agreement between the Contractor, the Engineer, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.87 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Engineer, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.88 "**Substantial Completion**" **or** "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.89 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.90 "**System**" means the wastewater (sanitary) system or the potable water system described in Exhibit A.

1.91 "**Team Subcontract**" means an agreement between the Contractor or the Engineer and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.92 "**Team Subcontractors**" means the Contractor and the Engineer.

1.93 "**Trustee**" shall have the meaning set forth in the Operating Agreement.

1.94 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.95 "**Work**" **or** "**Scope of Work**" shall mean (1) prior to the execution of the Construction Modification, the Initial Work or Initial Scope of Work, and (2) as to the Work described in the execution of the Construction Modification, the Final Work or Final Scope of Work. The terms Work or Scope of Work include Design Work and Construction Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

2.1.1 The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A, and the Schedule set forth in Exhibit H, all as revised pursuant to the terms of this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing or decreasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof.

2.1.2 The Company's current requirements for the Project are set forth in the Initial Scope of Work attached hereto as Exhibit A.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement (e.g., if this Agreement is terminated pursuant to Section 2.1.2, the Company has paid all design-related amounts due to the Design/Builder). The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement. The Design/Builder and Engineer expressly reserve the right to utilize and re-use their own style and approach to the design of similar projects.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result

of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that as of the date of the Construction Modification it will have taken steps reasonably necessary to ascertain the nature and location of the Work, and that it will have investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of the Construction Modification, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. The Design/Builder acknowledges that certain wells in and around the Site that have been, or are currently, active have been known to, or currently, contain elevated concentrations of arsenic, uranium, and fluoride. Notwithstanding the foregoing, the Initial Scope of Work does not include, the Design/Builder has no responsibility for, and except as set forth in this Section 2.4.2 the Design/Builder shall have no obligation to design the Project to take into account, any Hazardous Materials at the Site (other than Hazardous Materials brought to the Site by the Design/Builder, Team Subcontractors or Subcontractors) or any conditions acknowledged above, except that the Parties may expressly agree otherwise in the Construction Modification. In the event that the Company discloses or the Design/Builder learns of any Hazardous Materials at the Site, the Company shall pay the Design/Builder the increased Cost of the Work (e.g., increased costs to design and construct the Project in light of the Hazardous Materials), Fee, Overhead, and Contingency resulting therefrom, and Contract Time shall be adjusted accordingly to reflect the increased amounts and time of performance. Notwithstanding the foregoing, the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of Hazardous Materials unless the Design/Builder, at its sole discretion, decides to do so.

2.4.3 Below Grade Utilities. Unless otherwise set forth in Exhibit A, the Design/Builder will include in the Final Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Contract Documents defined in Section 1.26, or known as of the Effective Date to the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. However, if the utilities are made of Hazardous Materials or are insulated with Hazardous

Materials, the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of Hazardous Materials unless the Design/Builder, at its sole discretion, decides to do so.

2.5 Scope of Work Submittal Documents and Construction Documents.

2.5.1 General. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Section 2.1.2, Exhibit H and Exhibit J, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company. The Design/Builder shall not commence the Construction Work until the Parties have executed the Construction Modification.

2.5.2 Reliance on Approvals. Subject to the penultimate sentence of Section 2.5.1 above, the Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Initial or Final Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the durations and procedures set forth in Exhibit H.

2.6 Legal Requirements.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. The Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in

infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within [redacted]ays of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The Design/Builder shall, upon written request, provide copies of such reports to the Credit Provider. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities, subject to Exhibit A, as applicable, if in the reasonable opinion of the Engineer, the utilities are in satisfactory condition. If the Design/Builder elects to reuse existing utilities pursuant to the foregoing, and Exhibit A contemplates Design/Builder’s construction of new utilities, a deductive Change Order shall be issued for the cost of the utilities work no longer required. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company’s election may be replaced by the Design/Builder. The cost of such replacement

shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in accordance with the Schedule, and that for purposes of commencement of warranties, warranties with respect to the facility or designated portion thereof shall commence on the date of Substantial Completion of such facility or designated portion thereof. If within after the earlier of (A) the date of Substantial Completion of the facility or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such facility or designated portion thereof, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such facility to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. The costs to correct Work which is not in accordance with the requirements of the Contract Documents shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid . Notwithstanding the foregoing, if the correction work referenced in this Section 2.8.3 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.4 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.5 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.6 Intentionally Deleted.

2.8.7 Failure to Correct Work. If the Design/Builder fails to correct Construction Work within a reasonable time after written notice from the Company pursuant to Section 2.8.3, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within ays after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

2.8.8 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance, f the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.9 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company Notwithstanding the foregoing, if the removal work referenced in this Section 2.8.9 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.10 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work, whether completed or partially

completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule d shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder. If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Site.

The Design/Builder shall prepare a mobilization plan, prior to the start of the Construction Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site are not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents after Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the chedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In

addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCMWTC Coleville (to the attention of Base Commander), Headquarters Marine Corps (to the attention of Military Housing Office ("**MHO**")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MCMWTC Coleville, and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Facility Engineering and Acquisition Division ("**FEAD**") timely notice of when and where tests and inspections are to

be made so that the Company, the Construction Consultant, and FEAD may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule and shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents,

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Construction Modification. Execution of the Construction Modification by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens within Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract

Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule the costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule and the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule n accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to

the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately

notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorneys' fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule If it is determined that the Design/Builder was not at fault, all costs of defense, including attorneys' fees, shall be paid by the Company in accordance with the Change Order provisions of this Agreement.

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Engineer's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a .

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any

liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

Subject to Section 2.1.2, the Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of the Construction Modification. The Schedule shall set forth separate Substantial Completion Dates for each System. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order. The Final Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for the Construction Phase.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Intentionally Deleted.

4.4 Intentionally Deleted.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, approvals and authorizations from federal, state, or local governments or quasi-governmental agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and/or the DoN and those within the control of the Company and/or the DoN, or failure of performance by the Company and/or the DoN or those within the control of the Company and/or the DoN.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate

number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Company in accordance with the Change Order provisions of this Agreement.

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay Liquidated Damages. "**Liquidated Damages**" shall be in an amount equal

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule, except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 Schedule of Values.

As part of the Construction Modification, the Design/Builder will submit to the Company a schedule of values which sets forth the various portions of the Construction Work, This schedules of values shall be used as a basis for payment and shall be updated periodically. All estimated costs not allocated to a line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the

applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of [redacted] or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within [redacted] ays of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

[redacted]

5.5 Retainage.

5.5.1 With respect to the Initial Scope of Work, [redacted]

5.5.2 With respect to Construction Work, [redacted] Retainage on the Construction Work as outlined in, and defined in, the Construction Modification shall be withheld until such Construction Work is [redacted] complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable directly to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of the Construction Work shall be released upon Substantial Completion of such Construction Work, less [redacted] of the value of any uncompleted Construction Work or Punch list items. Subject to the First Mortgage Loan Documents, Retainage withheld on account of such uncompleted Construction Work or Punch list items shall be released upon completion of such uncompleted Construction Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within [redacted] Days of Final Completion of the entire Construction Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said

Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

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

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received.

5.11 Substantial Completion.

When the Design/Builder considers that a System or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such System or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such System or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the System or other portion of the Work has occurred. The Certificate of Substantial Completion shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each System, the Company will become responsible for utilities, security, maintenance, and any insurance for the System or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a System, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than ays after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each System, on the date of Substantial Completion of such System, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the

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

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a System. When the Design/Builder considers that a System or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such System or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a System or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a System. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company (with copies to the Trustee and the Credit Provider):

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the System have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a System, Final Completion of such System is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the System fully completed. If the remaining balance for the System not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J, as applicable;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses; and

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The

Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Each such Contingency shall be increased by amounts not expended on other line items in the relevant schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the either or both Contingency line items as of the date of Final Completion of the entire Project, which shall be paid as set forth in Section 5.1.3. Notwithstanding the foregoing, increase in the line item amount for General Conditions in excess o of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving

the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the e Schedule. If the Design/Builder receives a written communication signed by the Company, which the Design/Builder believes is a Change Directive, but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in the Schedule, the method and adjustment shall be determined as provided in Section 6.5 below. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in th Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within twenty one (21) Days after it becomes aware of the event giving rise to the Change Proposal.

The Company shall have twenty one (21) Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work set forth in the Construction Modification,

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Construction Work is delayed beyond date for such commencement set forth in the Construction Modification, for any reason other than the fault of the Design/Builder,

6.7

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

The Design/Builder shall be responsible for care, custody and control of the Site or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Site or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Site or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of the entire Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of a Site or portion thereof

shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of a Site or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to such Site or portion thereof which may thereafter occur. In the event that loss or damage to a Site or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Engineer pursuant to which the Design/Builder shall delegate all design responsibilities contained in this Agreement to the Engineer. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company or its assigns the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company or its assigns due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement. All Team Subcontracts shall contain a provision allowing for termination consistent with Section 2.1.2 above.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to

the extent applicable to the Work to be performed by the Subcontractor. All Subcontracts shall contain a provision allowing for termination consistent with Section 2.1.2 above.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company or its assigns the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company or its assigns. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified Subcontractors that will provide labor and materials for the Project having a value in excess of The Design/Builder will then select the Subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work at the Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, and the Trustee as co-obligees, and shall be The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the applicable Construction Agreement, as and when provided in the applicable Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees, and shall be in the forms set forth on Exhibit N-1 (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Engineer for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Engineer.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work .

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or any Site to be loaded so as to endanger anyone's safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to

all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

In an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or

performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site(s) and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute; During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought.

The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within Days of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an additional Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of ays through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or

applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim

for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

12.6.3 The foregoing rights in this Section 12.6 are in addition to the Company's termination right set forth in Section 2.1.2.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless relating to all supplements and/or amendments to any exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to Coleville Utility Upgrade Design/Builder’s Consent Agreement dated as of the Effective Date executed by the Design/Builder in favor of the Credit Provider and

the Trustee named therein. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Company or Design/Builder.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

[Signatures Continue on the Following Page]

COMPANY:

[Signature Page to Coleville Utility Upgrade Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

COMPANY:

[Signature Page to Coleville Utility Upgrade Design/Build Agreement (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN/BUILDER:

[Signature Page to Coleville Utility Upgrade Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Initial Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	[Not Used]
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Governmental Approvals
Exhibit G	-	Intentionally Omitted
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination

EXHIBIT A

INITIAL SCOPE OF WORK

EXHIBIT B

EXHIBIT C

[NOT USED]

EXHIBIT D

EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible prior to commencement of any construction activities by the Design/Builder:

Department of the Navy:

1. Prior to the commencement of construction, a demolition Plan will be submitted to and approved by the DoN.

2. Obtain written approval by the DoN on final Construction Documents which will be submitted in accordance with Exhibit J of this Agreement.

3. Provide all approvals and oversight, if necessary, to ensure that the Final Scope of Work as submitted by the Design/Builder satisfies all natural and cultural resources requirements as outlined in the Company documents.

Third Party Plan Review:

4. The Company shall obtain a third party to review the Construction Documents for approval.

Utilities:

5. The Company shall arrange for the provision of all easements or provide all utility licenses and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging utilities.

Group Approvals:

6. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

7. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right

to construct the development on the Site, such approvals shall be the responsibility of the Company.

The term "**D/B Submission**" shall mean any of the items described in paragraphs 1 and 3 above, or any component thereof.

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT I

SITE DESCRIPTION

EXHIBIT A-1

LEGAL DESCRIPTION OF PARCEL O COLEVILLE HOUSING

PARCEL O: COLEVILLE HOUSING

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF MONO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

TOGETHER WITH PARCELS 1, 2 AND 3 OF PARCEL MAP NO. 31-49 IN THE COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 2, PAGES 70, 70-A AND 70-B OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF MONO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, SHOWN AS A 60.00 FOOT STRIP OF LAND ON PARCEL MAP NO. 31-49, RECORDED IN BOOK 2, PAGES 70, 70-A, AND 70-B OF PARCEL MAPS, RECORDS OF SAID COUNTY, AND BEING PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR A POINT OF REFERENCE AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST, M.D.M., THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, NORTH 0°07'23" WEST 518.98 FEET TO The True Point of Beginning:

1. THENCE ALONG THE NORTH LINE OF PARCELS 3 AND 4 PER SAID PARCEL MAP NO. 31-49, SOUTH 89°52'53" EAST 595.10 FEET TO THE WESTERLY LINE OF U.S. HIGHWAY 395;
2. THENCE ALONG SAID WESTERLY LINE, NORTH 26°11'08" WEST 66.95 FEET TO THE SOUTH LINE OF PARCEL 2 PER SAID PARCEL MAP NO. 31-49;
3. THENCE ALONG SAID SOUTH LINE, NORTH 89°52'53" WEST 565.68 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36;
4. THENCE ALONG SAID WEST LINE, SOUTH 0°07'23" EAST 60.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING:

Commencing at a found 2-½" Iron Pipe with cap stamped "U.S. General Land Office Survey 1941" accepted as the Northwest Corner of said Section 36, as shown on said Parcel Map No. 31-49; said point bears North 02°34'08" West 1345.72 feet from the Southwest Corner of the Northwest Quarter of the Northwest Quarter of said Section 36, marked by a found #3 rebar pin;
Thence South 73°56'37" East a distance of 1238.38 feet to the TRUE POINT OF BEGINNING;
Thence North 86°21'09" East a distance of 125.36 feet to a point intersecting the Westerly boundary line of said Parcel 1;
Thence continuing North 86°21'09" East a distance of 134.06 feet;
Thence South 25°50'39" East a distance of 58.44 feet to a point intersecting the Northerly boundary line of said Parcel 2;
Thence continuing South 25°50'39" East a distance of 160.30 feet;
Thence South 83°16'28" West a distance of 230.36 feet to a point intersecting the Westerly boundary line of said Parcel 2;
Thence continuing South 83°16'28" West a distance of 29.46 feet;
Thence North 24°32'05" West a distance of 231.71 feet to the TRUE POINT OF BEGINNING.

Containing 1.261 acres, more or less.

ALSO EXCEPTING THEREFROM THE FOLLOWING:

LEASE EXCEPTION PARCEL BUILDING NO. 602

All of that portion of the Northwest Quarter of the Northwest Quarter of Section 36, Township 9 North, Range 22 East, Mount Diablo Meridian, in the County of Mono, State of California According to the Official Plat thereof, said land being more particularly described as follows:

Commencing at a found 2-1/2" Iron Pipe with cap stamped "U.S. General Land Office Survey 1941" accepted as the Northwest Corner of said Section 36, as shown on Parcel Map No. 31-49, as per Map recorded in Book 2, Pages 70, 70-A, and 70-B of Parcel Maps filed in the office of the Recorder of said Mono County, said point bears North 02°34'06" West 1345.72 feet from the Southwest Corner of the Northwest Quarter of the Northwest Quarter of said Section 36, marked by a found #3 rebar pin; thence South 60°06'51" East (South 60°07'05" East, record) a distance of 982.07 feet (981.63 feet, record) to the Northwesterly corner of that "Not-a-Part" portion of property per lease agreement Contract No. N68711-03-RP-01M02 and the A.L.T.A. Survey by Cornerstone Engineering Inc. dated 09-19-03 as made a part thereof and as shown on Record of Survey Map No. 31-47 recorded in Book of Record of Survey Maps at Page 16, filed as Instrument No. 2006009040 in the office of the Recorder in said Mono County; thence along the boundary line of said "Not-a-Part" portion of property the following 2 courses, North 65°42'44" East (North 65°45'09" East, record) a distance of 65.66 feet (65.56 feet,

record) to the Northeasterly corner of said “Not-a-Part” portion of property; thence South 24°06’41” East (South 24°14’51” East, record) a distance of 52.62 feet (52.49 feet, record) to Southeasterly corner of said “Not-a-Part” portion of property; thence leaving said boundary line North 70°07’45” East a distance of 8.03 feet to the TRUE POINT OF BEGINNING; thence South 29°54’56” East a distance of 48.13 feet; thence South 60°04’28” West a distance of 41.39 feet; thence North 29’54’27” West a distance of 48.12 feet; thence North 60°04’14” East a distance of 33.34 feet to a point of intersection with the Southeasterly prolongation of the Northeasterly boundary line of said “Not-a-Part” portion of property, said point being distant thereof North 24°06’41” West 6.16 feet from the Southeasterly corner of said “Not-a-Part” portion of property; thence leaving said Northeasterly boundary line North 60°50’02” East a distance of 7.28 feet to a point which bears North 29°54’56” West a distance of 7.43 feet from the aforesaid true point of beginning; thence South 29°54’56” East a distance of 7.43 feet to the TRUE POINT OF BEGINNING.

Containing 0.047 acres, more or less or 2049 square feet, more or less.

AND ALSO EXCEPTING THEREFROM THE FOLLOWING first set out in Phase VI:

LEASE EXCEPTION PARCEL 2A
Reference Contract No. N68711-03-RP-01M02

All of that portion of the Northwest Quarter of the Northwest Quarter and the Northeast Quarter, Northwest Quarter of Section 36, Township 9 North, Range 22 East, Mount Diablo Meridian, in the County of Mono, State of California, according to the Official Plat thereof, together with Portions of Parcel 2 of Parcel Map No. 31-49, in the County of Mono, State of California, as per Map recorded in Book 2, Pages 70, 70-A, and 70-B of Parcel Maps filed in the Office of the Recorder of Mono County, said land being more particularly described as follows:

Commencing at a found 2-½” Iron Pipe with cap stamped “U.S. General Land Office Survey 1941” accepted as the Northwest Corner of said Section 36, as shown on said Parcel Map No. 31-49; said point bears North 02°34’06” West 1345.72 feet from the Southwest Corner of the Northwest Quarter of the Northwest Quarter of said Section 36, marked by a found #3 rebar pin; thence South 73°56’37” East a distance of 1238.38 feet to the Northwesterly corner of that portion of property excepted from lease agreement Contract No. N68711-03-RP-01M02 as shown on Record of Survey Map No. 31-47 recorded in Book of Record of Survey Maps at Page 16, filed as Instrument No. 2006009040 in the Office of the Recorder in said Mono County; thence along the Northerly boundary line of said portion of property excepted from lease agreement North 86°21’09” East a distance of 259.42 feet to the Northeasterly corner of said portion of property excepted from lease agreement; thence along the Easterly boundary line of said portion of property South 25°50’39” East a distance of 218.74 feet, to the Southeasterly corner of said portion of property excepted from lease agreement, said corner being the TRUE POINT OF BEGINNING; thence continuing South 25°50'39" East a distance of 273.79 feet to a point in the Southerly boundary line of said Parcel 2; thence along said

Southerly boundary line North 89°52'32" West (North 89°55’59” West record) a distance of 347.56 feet to the Southwesterly corner of said Parcel 2; thence along the Westerly line of said Parcel 2 North 00°06'51" West (North 00°06’47” West record) a distance of 5.21 feet to the beginning of a non-tangent 110.00 foot radius curve concave Northeasterly to which a radial line bears South 25°12'13" West; thence leaving said westerly line Northwesterly along the arc of said curve through a central angle of 37°35'29" a distance of 72.17 feet; thence North 27°12'17" West 266.93 feet to the beginning of a tangent 203.46 foot radius curve concave Southwesterly; thence Northwesterly along the arc of said curve through a central angle of 26°16'33" a distance of 93.31 feet to the beginning of a non-tangent 163.97 foot radius curve concave Southeasterly to which a radial line bears North 53°04'26" West; thence Northeasterly along the arc of said curve through a central angle of 44°34'49" a distance of 127.58 feet to said Northwesterly corner of said portion of property excepted from lease agreement to which a radial line bears North 08°29’37” West; thence non-tangent to said curve along the Westerly line of said portion of property excepted from lease agreement; South 24°32'05" East 231.71 feet to the Southwesterly corner of said portion of property excepted from lease agreement; thence along the Southerly boundary line of said portion of property excepted from lease agreement North 83°16'28" East a distance of 259.82 feet to the TRUE POINT OF BEGINNING.

Containing 2.431 acres, more or less or 105915 square feet, more or less.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within Days of requested review for Design Materials and Design Work. The Company acknowledges that, after such time, if any, that the parties execute the Construction Modification, the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the review time, then after three Business Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

4. Notwithstanding the foregoing or anything else to the contrary in this Agreement the Company acknowledges and agrees that it shall be entitled to review the Design Materials and Design Work only at the following stages:

   (a) the review of the Scope of Work Submittal Documents as part of evaluating the Design/Builder's Proposal; and
   (b) the review of the 100% complete set of Construction Documents.

EXHIBIT K

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using overage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance and Project-Specific Professional Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

DESIGN GROUP MEMBERS

[To be provided by the Design/Builder]

EXHIBIT N-1

[TO BE INCLUDED IN THE CONSTRUCTION MODIFICATION]

EXHIBIT N-2

EXHIBIT O

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to in this Exhibit P as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the Wage Decision attached hereto as Appendix P-1, and the Payrolls and Basic Records provision. The provisions of the Davis-Bacon Act, as implemented by Federal Acquisition Regulation (FAR) 52.222-6, applicable to this Agreement are provided below.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder to Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. **Davis-Bacon Act (July 2005)**

(a) *Definition*.—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall

be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

> (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
>
> (ii) The classification is utilized in the area by the construction industry.
>
> (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the: Wage and Hour Division, Employment Standards Administration,

U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (e) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

General Decision Number: CA100031 04/16/2010 CA31

Counties: Inyo, Kern and Mono Counties in California

[See Attached Copy of General Decision Number CA100031 04/16/2010 CA31]

General Decision Number: CA100031 04/16/2010 CA31

Superseded General Decision Number: CA20080031

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

Counties: Inyo, Kern and Mono Counties in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS.

Modification Number	Publication Date
0	03/12/2010
1	03/26/2010
2	04/02/2010
3	04/16/2010

ASBE0005-001 01/01/2010

INYO AND KERN

	Rates	Fringes
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls)	$ 24.21	13.76
Insulator/asbestos worker (Includes the application of all insulating materials, protective coverings, coatings & finishes to all types of mechanical systems)	$ 32.93	15.32

ASBE0005-005 01/01/2010

INYO AND KERN

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)	$ 18.85	8.03

ASBE0016-003 01/01/2010

MONO

	Rates	Fringes
Asbestos Workers/Insulator		

(Includes the application of
all insulating materials,
protective coverings,
coatings, and finishes to all
types of mechanical systems).....$ 39.78 16.66

BOIL0092-005 10/01/2009

INYO AND KERN

	Rates	Fringes
BOILERMAKER.....	$ 40.22	22.26

BOIL0549-003 01/01/2009

MONO COUNTY

	Rates	Fringes
BOILERMAKER.....	$ 37.01	22.25

BRCA0004-005 05/01/2009

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	$ 34.64	11.15

BRCA0018-010 09/01/2009

	Rates	Fringes
TERRAZZO FINISHER.....	$ 26.59	9.62
TERRAZZO WORKER/SETTER.....	$ 33.63	10.46

BRCA0018-011 08/01/2009

	Rates	Fringes
TILE LAYER.....	$ 30.04	10.84

BRCA0018-012 06/01/2008

KERN

	Rates	Fringes
MARBLE FINISHER.....	$ 25.52	9.08
TILE FINISHER.....	$ 21.07	7.88

CARP0409-002 07/01/2008

	Rates	Fringes
Diver		
(1) Wet.....	$ 663.68	9.82
(2) Standby.....	$ 331.84	9.82
(3) Tender.....	$ 323.84	9.82
(4) Assistant Tender.....	$ 299.84	9.82

Amounts in "Rates' column are per day

CARP0409-005 07/01/2009

	Rates	Fringes

Drywall
DRYWALL INSTALLER/LATHER....$ 37.35 10.58
STOCKER/SCRAPPER.....$ 10.00 6.67

CARP0409-006 07/01/2008

	Rates	Fringes
CARPENTER		
(01) Carpenter, cabinet installer, insulation installer, floor worker and acoustical installer....	$ 36.78	9.82
(02) Millwright.....	$ 37.85	9.82
(03) Pile driver; Derrick barge; Bridge or Dock Carpenter; Heavy framer; Rockslinger; Rock Bargeman; Scowman.....	$ 37.48	9.82
(04) Shingler (Commercial).	$ 36.91	9.82
(05) Table Power Saw Operator.....	$ 36.88	9.82
(06) Pneumatic Nailer or Power Stapler.....	$ 37.03	9.82
(07) Roof Loader of Shingles (Commercial).....	$ 25.84	9.82
(08) Saw Filer.....	$ 36.87	9.82
(09) Scaffold Builder.....	$ 28.55	9.82

FOOTNOTE: Work of forming in the construction of open cut sewers or storm drains, on operations in which horizontal lagging is used in conjunction with steel H-Beams driven or placed in pre-drilled holes, for that portion of a lagged trench against which concrete is poured, namely, as a substitute for back forms (which work is performed by piledrivers): $0.13 per hour additional.

ELEC0011-002 02/01/2010

COMMUNICATIONS AND SYSTEMS WORK

	Rates	Fringes
Communications System		
Installer.....	$ 26.99	3%+8.64
Technician.....	$ 28.79	3%+8.64

SCOPE OF WORK:
Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call systems, radio page, school intercom and sound, burglar alarms, fire alarm (see last paragraph below) and low voltage master clock systems in commercial buildings. Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems. Does not

cover work performed at China Lake Naval Ordnance Test Station. Fire alarm work shall be performed at the current inside wireman total cost package.

ELEC0428-001 12/01/2009

	Rates	Fringes
CABLE SPLICER		
China Lake Naval Weaons Center, Edwards AFB	$ 41.00	3%+16.14
Remainder of Kern County	$ 35.37	3%+16.14
ELECTRICIAN		
China Lake Naval Weapons Center, Edwards AFB	$ 37.78	3%+16.14
Remainder of Kern County	$ 32.15	3%+16.14

ELEC0477-001 06/01/2009

INYO AND MONO

	Rates	Fringes
ELECTRICIAN	$ 34.00	3%+14.95

CABLE SPLICER: $1.00 above Electrician.
TUNNEL WORK: 10% above Electrician.

ELEC1245-001 06/01/2009

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer	$ 44.47	13.11
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment)	$ 35.52	12.07
(3) Groundman	$ 27.17	11.82
(4) Powderman	$ 39.71	12.23

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

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ELEV0018-001 01/01/2010

	Rates	Fringes
ELEVATOR MECHANIC	$ 45.33	20.035

FOOTNOTE:
PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

ENGI0012-003 07/01/2009

	Rates	Fringes

OPERATOR: Power Equipment
(All Other Work)

GROUP 1	$ 36.83	17.22
GROUP 2	$ 37.61	17.22
GROUP 3	$ 37.90	17.22
GROUP 4	$ 39.39	17.22
GROUP 5	$ 40.49	17.22
GROUP 6	$ 39.61	17.22
GROUP 7	$ 40.71	17.22
GROUP 8	$ 39.72	17.22
GROUP 9	$ 40.82	17.22
GROUP 10	$ 39.84	17.22
GROUP 11	$ 40.94	17.22
GROUP 12	$ 40.01	17.22
GROUP 13	$ 40.11	17.22
GROUP 14	$ 40.14	17.22
GROUP 15	$ 40.22	17.22
GROUP 16	$ 40.34	17.22
GROUP 17	$ 40.51	17.22
GROUP 18	$ 40.61	17.22
GROUP 19	$ 40.72	17.22
GROUP 20	$ 40.84	17.22
GROUP 21	$ 41.01	17.22
GROUP 22	$ 41.11	17.22
GROUP 23	$ 41.22	17.22
GROUP 24	$ 41.34	17.22
GROUP 25	$ 41.51	17.22

OPERATOR: Power Equipment
(Cranes, Piledriving &
Hoisting)

GROUP 1	$ 38.18	17.22
GROUP 2	$ 38.96	17.22
GROUP 3	$ 39.25	17.22
GROUP 4	$ 39.39	17.22
GROUP 5	$ 39.61	17.22
GROUP 6	$ 39.72	17.22
GROUP 7	$ 39.84	17.22
GROUP 8	$ 40.01	17.22
GROUP 9	$ 40.18	17.22
GROUP 10	$ 41.18	17.22
GROUP 11	$ 42.18	17.22
GROUP 12	$ 43.18	17.22
GROUP 13	$ 44.18	17.22

OPERATOR: Power Equipment
(Tunnel Work)

GROUP 1	$ 38.68	17.22
GROUP 2	$ 39.46	17.22
GROUP 3	$ 39.75	17.22
GROUP 4	$ 39.89	17.22
GROUP 5	$ 40.11	17.22
GROUP 6	$ 40.22	17.22
GROUP 7	$ 40.34	17.22

PREMIUM PAY:
$3.75 per hour shall be paid on all Power Equipment Operator work on the followng Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled

tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9

cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any

combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting

device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the NW ï¿½ of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the W ï¿½ of the N ï¿½ of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE ï¿½ of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE ï¿½ of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point whch is the SW corner of Section 34.T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE ï¿½ of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the W ï¿½ of the NW ï¿½ of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE ï¿½ of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the W ï¿½ of the NW ï¿½ of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW ï¿½ of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

ENGI0012-004 08/01/2009

	Rates	Fringes

OPERATOR: Power Equipment
(DREDGING)
(1) Leverman.....$ 44.83 17.22
(2) Dredge dozer.....$ 40.36 17.22
(3) Deckmate.....$ 40.25 17.22
(4) Winch operator (stern
winch on dredge).....$ 39.70 17.22
(5) Fireman-Oiler,
Deckhand, Bargeman,
Leveehand.....$ 39.16 17.22
(6) Barge Mate.....$ 39.77 17.22

IRON0002-004 07/01/2009

	Rates	Fringes
Ironworkers:		
Fence Erector	$ 26.58	15.24
Ornamental, Reinforcing and Structural	$ 33.00	23.71

PREMIUM PAY:

$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0300-001 07/01/2008

	Rates	Fringes
Brick Tender	$ 27.17	13.75

LABO0300-003 01/01/2010

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1	$ 30.04	17.37
GROUP 2	$ 29.09	17.37
GROUP 3	$ 25.55	17.37
LABORER (TUNNEL)		
GROUP 1	$ 31.24	15.04
GROUP 2	$ 31.56	15.04
GROUP 3	$ 32.02	15.04
GROUP 4	$ 32.71	15.04
LABORER		
GROUP 1	$ 26.33	14.75
GROUP 2	$ 26.88	14.75

GROUP 3.....$ 27.43 14.75
GROUP 4.....$ 28.98 14.75
GROUP 5.....$ 29.33 14.75

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0" above base level and which work must be performed in whole or in part more than 75'-0" above base level, that work performed above the 75'-0" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete; Railroad maintenance, repair track person and road beds; Streetcar and railroad construction track laborers; Rigging and signaling; Scaler; Slip form raiser; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curbs, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer(lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials

("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power; Toxic waste removal

TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Bull gang mucker, track person; Changehouse person; Concrete crew, including rodder and spreader; Dump person; Dump person (outside); Swamper (brake person and switch person on tunnel work); Tunnel materials handling person

GROUP 2: Chucktender, cabletender; Loading and unloading agitator cars; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.); Vibrator person, jack hammer, pneumatic tools (except driller)

GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher

GROUP 4: Diamond driller; Sandblaster; Shaft and raise work

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

GROUP 3: Reboundmen

LABO0882-002 01/01/2010

	Rates	Fringes
Asbestos Removal Laborer	$ 26.15	14.25

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2009

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer	$ 27.05	10.40
(2) Vehicle Operator/Hauler	$ 27.22	10.40
(3) Horizontal Directional Drill Operator	$ 29.07	10.40
(4) Electronic Tracking Locator	$ 31.07	10.40
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1	$ 28.50	13.56
GROUP 2	$ 29.80	13.56
GROUP 3	$ 31.81	13.56
GROUP 4	$ 33.55	13.56

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the

application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-009 01/06/2010

	Rates	Fringes
DRYWALL FINISHER/TAPER	$ 29.19	12.19

PAIN0036-021 01/01/2010

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Journeyman Painter	$ 25.20	9.41
(2) Repaint	$ 23.10	9.41
(3) High Iron & Steel - Kern County only	$ 27.20	9.41

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.
HIGH IRON & STEEL:

Aerial towers, towers, radio towers, smoke stacks, flag poles (any flag poles that can be finished from the ground with a ladder excluded), elevated water towers, steeples and domes in their entirety and any other extremely high and hazardous work, cooning steel, bos'n chair, or other similar devices, painting in other high hazardous work shall be classified as high iron & steel

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PAIN0169-002 01/01/2010

	Rates	Fringes
GLAZIER	$ 31.18	14.15

PAIN1247-001 09/01/2009

	Rates	Fringes
SOFT FLOOR LAYER	$ 20.27	8.79

PLAS0200-007 08/05/2009

	Rates	Fringes
PLASTERER	$ 35.41	9.88

U.S. MARINE CORPS-PICKLE MEADOW & MOUNTAIN WARFARE TRAINING CENTER:
$3.00 additinal per hour.

PLAS0500-002 07/01/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 29.50	18.40

PLUM0345-001 07/01/2009

	Rates	Fringes
PLUMBER		
Landscape/Irrigation Fitter	$ 26.70	13.84
Sewer & Storm Drain Work	$ 25.18	15.67

PLUM0460-002 07/01/2009

	Rates	Fringes
PLUMBER (Plumber, Pipefitter, Steamfitter, Refrigeration)		
0 to 50 miles radius from 6718 Meany Avenue in Bakersfield	$ 32.57	16.84
50 to 75 miles radius	$ 37.07	16.84
75 miles radius or more	$ 39.57	16.84

FOOTNOTE: Work from a swinging scaffold, swinging basket, spider or from a bosun chair: 10% above the regular rate of pay for that day.

ROOF0027-001 01/01/2010

	Rates	Fringes
ROOFER	$ 27.65	8.05

FOOTNOTE: Work with pitch, pitch base of pitch impregnated products or any material containing coal tar pitch, on any building old or new, where both asphalt and pitchers are used in the application of a built-up roof or tear off: $2.00 per hour additional.

SFCA0669-007 01/01/2009

	Rates	Fringes
SPRINKLER FITTER	$ 32.15	16.05

SHEE0105-003 01/01/2010

LOS ANGELES (South of a straight line drawn between Gorman and Big Pines)and Catalina Island, INYO, KERN (Northeast part, East of Hwy 395), MONO ORANGE, RIVERSIDE, AND SAN BERNARDINO COUNTIES

	Rates	Fringes
SHEET METAL WORKER		
(1) Commercial - New Construction and Remodel work	$ 40.86	17.40
(2) Industrial work including air pollution control systems, noise abatement, hand rails, guard rails, excluding		

aritechtural sheet metal
work, excluding A-C,
heating, ventilating
systems for human comfort...$ 35.56 22.90

SHEE0105-004 01/01/2010

KERN (Excluding portion East of Hwy 395) & LOS ANGELES (North of a straight line drawn between Gorman and Big Pines including Cities of Lancaster and Palmdale) COUNTIES

	Rates	Fringes
SHEET METAL WORKER	$ 33.41	15.92

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* TEAM0011-002 07/01/2008

	Rates	Fringes
TRUCK DRIVER		
GROUP 1	$ 26.44	18.24
GROUP 2	$ 26.59	18.24
GROUP 3	$ 26.72	18.24
GROUP 4	$ 26.91	18.24
GROUP 5	$ 26.94	18.24
GROUP 6	$ 26.97	18.24
GROUP 7	$ 27.22	18.24
GROUP 8	$ 27.47	18.24
GROUP 9	$ 27.67	18.24
GROUP 10	$ 27.97	18.24
GROUP 11	$ 28.47	18.24
GROUP 12	$ 28.90	18.24

WORK ON ALL MILITARY BASES:
PREMIUM PAY: $3.00 per hour additional.
[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB, El Centro Naval Facility, Fort Irwin, Marine Corps Logistics Base at Nebo & Yermo, Mountain Warfare Training Center, Bridgeport, Point Arguello, Point Conception, Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person ($0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work; Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - $1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

ACKNOWLEDGED AND CONSENTED

National Public Finance Guarantee Corporation, as reinsurer of policy numbers 46757(1) and 46758(1) pursuant to the Quota Share Reinsurance Agreement, effective as of January 1, 2009, by and between MBIA Insurance Corporation and MBIA Insurance Corp. of Illinois (renamed National Public Finance Guarantee Corporation effective March 19, 2009), as Credit Provider (the "**Credit Provider**") under that certain Amended and Restated Indenture of Trust dated as of October 1, 2004, by and between Camp Pendleton & Quantico Housing, LLC (the "**Company**") and Union Bank, N.A. (formerly known as Union Bank of California, N.A.), as trustee (as amended and supplemented, the "**Indenture**"), hereby acknowledges and consents to the execution of the attached Coleville Utility Upgrade Design/Build Agreement by and between Camp Pendleton & Quantico Housing, LLC and Hunt Pendleton Design/Builders, LLC.

ACKNOWLEDGED AND CONSENTED:

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION

By: _____

Name: Andrew Schintz

Title: Director

[Credit Provider Acknowledgement Page to Coleville Utility Upgrade Design/Build Agreement]

EXHIBIT G-13

PHASE VII DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

CONSTRUCTION MODIFICATION #2 TO VISTA DEL SOL DESIGN/BUILD AGREEMENT

THIS CONSTRUCTION MODIFICATION #2 (this "**Modification #2**") is entered into as of the 15th day of December, 2011, and amends that certain Vista Del Sol Design/Build Agreement dated as of February 23, 2011, as amended by that certain Construction Modification #1 dated as of April 8, 2011 (as amended, the "**Agreement**"), by and between Camp Pendleton & Quantico Housing, LLC (the "**Company**") and [redacted] (the "**Design/Builder**"), as follows:

WHEREAS, the Company and Design/Builder entered into that certain Construction Modification #1 dated April 8, 2011 ("**Modification #1**") to permit the Design/Builder to proceed with certain air conditioning renovation work outlined in the Initial Scope of Work in advance of Design/Builder submitting a Design/Builder's Proposal for the balance of the Initial Scope of Work;

WHEREAS, the Company and Design/Builder have agreed to enter into this Modification #2 to permit the Design/Builder to proceed with the balance of the Initial Scope of Work, including but not limited to certain design, engineering and construction services for a community center and related improvements to be constructed at the Site (the "**Community Center and Related Improvements Work**");

WHEREAS, the Company and Design/Builder agree that execution of this Modification #2 shall not preclude the Parties from executing additional Construction Modifications in the future; and

WHEREAS, pursuant to the terms of Section 2.1.2 of the Agreement, the Parties hereto have agreed upon the [redacted] Community Center and Related Improvements Work and other matters described in that Section.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to modify the Agreement as follows:

1. The identity of the Contractor for the Community Center and Related Improvements Work is as follows [redacted]

2. The identity of the Construction Consultant for the Community Center and Related Improvements Work is as follows [redacted]

3. The Final Scope of Work for the Community Center and Related Improvements Work is attached hereto as Schedule 1.

4. The Scope of Work Submittal Documents for the Community Center and Related Improvements Work approved by the Company are the specifications listed on

Attachment 1 to the Final Scope of Work for the Community Center and Related Improvements Work attached hereto.

5. [redacted]

6. The schedule of values for the Community Center and Related Improvements Work is attached hereto as Schedule 2.

7. The Estimated Cost of the Work for the Community Center and Related Improvements Work is [redacted]

8. The Construction Overhead for the Community Center and Related Improvements Work is [redacted]

9. The Construction Fee for the Community Center and Related Improvements Work is [redacted]

10. The Construction Contingency for the Community Center and Related Improvements Work is [redacted]

11. Items that are set aside as additional scope contingency for the Community Center and Related Improvements Work are listed in Schedule 3 attached hereto.

12. [redacted]

13. The alternates for the Community Center and Related Improvements Work are listed in Schedule 5 attached hereto.

14. The forms of Contractor payment and performance bonds for the Community Center and Related Improvements Work are set forth as Schedule 6 attached hereto.

15. The date on which the Design/Builder must receive the Construction Notice to Proceed for the Community Center and Related Improvements Work is January 9, 2012.

16. The date of Substantial Completion of the Construction Work for the Community Center and Related Improvements Work is April 16, 2013.

17. The date of Final Completion of the Construction Work for the Community Center and Related Improvements Work is April 16, 2013.

18. The schedule for the Construction Work for the Community Center and Related Improvements Work is attached hereto as Schedule 7.

19. To account for the proper calculation of the Incentive Fee for Modification #1 and Modification #2 (i) Section 5.1.4 of the Agreement is hereby deleted and replaced

with Section 5.1.4 set forth on Attachment A, attached hereto and (ii) Exhibit O to the Agreement is hereby deleted and replaced with the new Exhibit O, attached hereto.

20. The parties agree that Item #3 on Exhibit F to the Agreement shall be deleted in its entirety.

21. The parties agree that there are no known issues on the Site related to natural or cultural resources or archaeological artifacts at this time. As such, the Design/Builder has not included any provisions in either the Modification #1 Final Scope of Work nor in the Modification #2 Final Scope of Work to address impacts to natural or cultural resources or archaeological artifacts. Therefore, if any natural or cultural resources or archaeological artifacts are discovered during construction, the Design/Builder will immediately notify the Company. The Company may issue a Change Order to the Design/Builder in accordance with the provisions set forth in the Vista Del Sol Design/Build Agreement to accommodate the handling of such natural or cultural resources or archaeological artifacts.

22. Capitalized terms used in Modification #1 and Modification #2, and attachments thereto, and not otherwise defined shall have the same meaning as those set forth in the Agreement.

23. Except as set forth herein, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Modification #2 as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

[Signature Page to Vista Del Sol Design/Build Agreement – Construction Modification #2 (Page 1 of 2)]

[Signatures Continue on the Following Page]

DESIGN/BUILDER:

[Signature Page to Vista Del Sol Design/Build Agreement – Construction Modification #2 (Page 2 of 2)]

LIST OF SCHEDULES

Schedule 1

#7058303

#7058303

#7058303

#7058303

Schedule 2

Schedule of Values for the Community Center and Related Improvements Work

[See Attached]

Schedule 3

Schedule 4

List of Assumptions

[See Attached]

SCHEDULE 4

List of Assumptions

#7059326

Schedule 5

Schedule 6

Forms of Contractor Payment and Performance Bonds for the Community Center and Related Improvements Work

[See Attached]

Schedule 7

Construction Work Schedule for the Community Center and Related Improvements Work

[See Attached]

Attachment A

Exhibit O

Design/Build Audits

[See Attached]

EXHIBIT O

EXECUTION COPY

CONSTRUCTION MODIFICATION #1 TO VISTA DEL SOL DESIGN/BUILD AGREEMENT

THIS CONSTRUCTION MODIFICATION #1 (this "**Modification #1**") is entered into as of the 8th day of April, 2011 , and amends that certain Vista Del Sol Design/Build Agreement dated as of February 23, 2011(the "**Agreement**"), by and between Camp Pendleton & Quantico Housing, LLC (the "**Company**") an he "**Design/Builder**"), as follows:

WHEREAS, when the Agreement was entered into between the Company and Design/Builder, the Parties agreed that they would later enter into a Construction Modification setting forth other matters;

WHEREAS, the Company and Design/Builder had initially intended to enter into a single Construction Modification, however, the Parties have agreed to enter into this Modification #1 to permit the Design/Builder to proceed with certain air conditioning renovation work outlined in the Initial Scope of Work (the "**AC Renovation Work**") in advance of Design/Builder submitting a Design/Builder's Proposal for the balance of the Initial Scope of Work;

WHEREAS, the Company and Design/Builder agree that execution of this Modification #1 shall not preclude the Parties from executing additional Construction Modifications in the future; and

WHEREAS, pursuant to the terms of Section 2.1.2 of the Agreement, the Parties hereto have agreed upon the AC Renovation Work and other matters described in that Section.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to modify the Agreement as follows:

1. The identity of the Contractor for the AC Renovation Work is as follows

2. The identity of the Construction Consultant for the AC Renovation Work is as follows: .

3. The Final Scope of Work for the AC Renovation Work is attached hereto as Schedule 1.

4. The Scope of Work Submittal Documents for the AC Renovation Work approved by the Company are the specifications listed on Attachment 1 to the Final Scope of Work for the AC Renovation Work attached hereto.

5.

6. The schedule of values for the AC Renovation Work is attached hereto as Schedule 2.

7. The Estimated Cost of the Work for the AC Renovation Work is

8. The Construction Overhead for the AC Renovation Work i

9. The Construction Fee for the AC Renovation Work is

10. The Construction Contingency for the AC Renovation Work is

11. The allowances for the AC Renovation Work are listed in Schedule 3 attached hereto.

12.

13. The alternates for the AC Renovation Work are listed in Schedule 5 attached hereto.

14. The forms of Contractor payment and performance bonds for the AC Renovation Work are set forth as Schedule 6 attached hereto.

15. The date on which the Design/Builder must receive the Construction Notice to proceed for the AC Renovation Work is April 11, 2011.

16. The date of Substantial Completion of the Construction Work for the AC Renovation Work is October 11, 2011.

17. The date of Final Completion of the Construction Work for the AC Renovation Work is October 11, 2011.

18. The schedule for the Construction Work for the AC Renovation Work is attached hereto as Schedule 7.

19. Capitalized terms used in the Final Scope of Work for the AC Renovation Work shall have the same meaning as those in the Agreement.

20. Except as set forth herein, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

LIST OF SCHEDULES

Schedule 1

Attachment 1

Scope of Work Submittal Documents for the AC Renovation Work

[See Attached]

February 14, 2011

Re: :
Mechanical Load Calculations and Sizing

has performed load calculations and has developed recommendations of sizes for new DX coils, replacement furnaces, and new condensing units for the areas. There are already existing refrigerant conduits and lines in place at the remaining at the Aztec site that do not have an installed Furnace and Condenser. The line sizes line sets are 3/8" supply and 1 1/8" suction. The suction lines reduce to 7/8" at the compressor and coil. The following is a summation of the different housing unit types.

The following Parameters were used to perform the envelope calculations for the buildings; these parameters were taken from As-Built Drawings dated "03-19-1993" for our use and they were typical for all existing Housing Unit Types analyzed.

Based on the loads acquired from the energy model, the following recommendations were developed (See Appendix A for Load Calculations):

Schedule 2

Schedule of Values for the AC Renovation Work

Schedule 2

Schedule 3

Schedule 4

List of Assumptions

Schedule 5

Alternates for the AC Renovation Work

None.

Schedule 6

Forms of Contractor Payment and Performance Bonds for the AC Renovation Work

Schedule 7

Construction Work Schedule for the AC Renovation Work

[See Attached]

EXECUTION COPY

VISTA DEL SOL DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

, as Design/Builder

Dated as of February 23, 2011

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VISTA DEL SOL DESIGN/BUILD AGREEMENT

This Vista Del Sol Design/Build Agreement (this "**Agreement**") dated as of February 23, 2011 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**ACM**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.2 "**Additional Services Fee**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.3 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.4 "**Agreement**" means this Vista Del Sol Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.5 "**Alternate**" shall have the meaning set forth in Section 9.3.2 hereof.

1.6 "**Amended and Restated Ground Lease**" shall have the meaning set forth in the Operating Agreement.

1.7 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.8 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.9 "**Architect**" means

1.10 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.11 "**CCIP**" shall have the meaning set forth in Exhibit D hereof.

1.12 "**Certificate of Substantial Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.13 "**Certificate of Final Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.14 "**Change Directive**" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.15 "**Change Order**" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.16 "**Change Proposal**" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.17 **"City"** means the City of Twentynine Palms, California and any of its municipal governmental or quasi-governmental divisions and agencies, including, but not limited to the Twentynine Palms Water District and the Twentynine Palms Fire Department.

1.18 "**Civil Engineer**" means Spectrum Land Planning, Inc.

1.19 "**Claims**" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.20 "**Company**" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.21 "**Company Event of Default**" shall have the meaning set forth in Section 12.3 hereof.

1.22 "**Company Indemnified Parties**" means the Company, its members, agents, partners and employees.

1.23 "**Construction Agreement**" means that certain Construction Agreement between the Contractor and the Design/Builder to be executed in connection with the Construction Modification, as such Construction Agreement is amended and modified from time to time.

1.25 "**Construction Consultant**" means its successors and assigns.

1.26 "**Construction Documents**" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Construction Documents must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.27 "**Construction Modification**" shall have the meaning set forth in Section 2.1.2.

1.28 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.29 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.30 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.31 "**Contract Documents**" means this Agreement, the Construction Modification (if any), other modifications and amendments to this Agreement, and the Construction Documents prepared by the Architect and approved by the Company, all of which form the entire integrated agreement between the Company and the Design/Builder.

1.32 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Design Work and, as set forth in the Construction Modification, for Substantial Completion of the Work.

1.33 "**Contractor**" means th

1.34 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.35 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D.

1.36 **"County"** means California and any of its municipal governmental or quasi-governmental divisions and agencies.

1.37 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.38 "**Credit Provider**" shall have the meaning as set forth in the Operating Agreement.

1.39 "**Day**" **or** "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "**Business Day**" or "**Business Days**" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of California are open for business.

1.40 "**Design/Builder**" mean

1.41 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.42 "**Design/Builder Indemnified Parties**" means the Design/Builder, the Contractor and the Architect, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.43 "**Design/Builder Initiated Change Orders**" means Design/Builder initiated Change Orders other than any Force Majeure Change Orders.

1.44 "**Design/Builder's Proposal**" shall have the meaning set forth in Section 2.1.2.

1.45 "**Design Architect Agreement**" means that certain Design Architect Agreement between the Architect and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.46 "**Design Group**" means all architects and engineers having a contract with the Design/Builder or Architect to furnish architectural or engineering services for the Project.

Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.47 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.48 "**Design Phase**" means the period set forth in the Schedule commencing on Effective Date and ending upon the date the Company approves the Construction Documents.

1.49 "**Design Work**" means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.50 "**DoN**" means the United States of America, Department of the Navy.

1.51 "**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement.

1.52 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.53 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.54 **"Facility Engineering and Acquisition Division" or "FEAD"** shall have the meaning set forth in Section 2.16.1 hereof.

1.55 "**Fee**" means

1.56 "**Final Completion" or "Finally Complete**" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.57 "**Final Schedule**" means the schedule for completion of the Final Scope of Work.

1.58 "**Final Work**" or "**Final Scope of Work**" means all labor, materials and services expected to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, including the Scope of Work Submittal Documents approved by the Company and the Design/Builder's Proposal reflected in the executed Construction Modification, if any.

1.59 "**First Mortgage Loan Documents**" shall have the meaning as set forth in the Operating Agreement.

1.60 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.62 "**Governmental Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.63 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.64 "**Hourly Rates for Additional Services**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.65

1.66 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.67 "**Initial Schedule**" means the schedule for completion of the Construction Documents attached hereto as Exhibit H.

1.68 "**Initial Work**" or "**Initial Scope of Work**" means all labor, materials and services expected to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents existing as of the Effective Date, as more fully described in Section 2.1.2 and Exhibit A hereto.

1.69 "**Landscaping Work**" shall mean the landscaping provided for new units as more fully described in Exhibit A.

1.70 "**LBP**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.71 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4 hereof.

1.72 "**Managing Member**" means which is the managing member of the Company.

1.73 "**Mobilization Plan"** shall have the meaning set forth in Section 2.11 hereof.

1.74 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.75 "**Operating Agreement**" means that certain Fourth Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of January 15, 2010, as amended from time to time.

1.76 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.77 "**Overhead**" means

1.78 "**Party**" **or** "**Parties**" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.79 "**Payment and Performance Bonds**" means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work at the Site, including payment for all materials and labor furnished or supplied in connection with such Construction Work, by the Contractor, as required under the Construction Agreement.

1.80

1.81

1.82 "**Product Data**" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.83 "**Project**" means the facilities located on the Site, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.84 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.85 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.86 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.88 "**Schedule**" means (1) prior to the Construction Modification, the Initial Schedule, or (2) as to the Work described in the Construction Modification, the Final Schedule.

1.89 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.90 "**Scope of Work Submittal Documents**" means Construction Documents prepared to approximately 95% completion.

1.91 "**Self-Performed Work**" shall have the meaning set forth in Section 8.3 hereof.

1.92 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.93 "**Shop Drawings**" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.94 "**Site**" means the property identified on Exhibit I attached hereto, and any other real property on which the Work will be performed.

1.95 **"State"** means the State of California and any of its municipal governmental or quasi-governmental divisions and agencies.

1.96 "**Subcontract**" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.97 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.98 "**Substantial Completion**" **or** "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.99 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.100 "**Team Subcontract**" means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.101 "**Team Subcontractors**" means the Contractor and the Architect.

1.102 "**Trustee**" shall have the meaning set forth in the Operating Agreement.

1.103 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.104 "**Work**" **or** "**Scope of Work**" means (1) prior to the execution of the Construction Modification, the Initial Work or Initial Scope of Work, and (2) as to the Work described in the execution of the Construction Modification, the Final Work or Final Scope of Work. The terms Work or Scope of Work include Design Work, Construction Work and Landscaping Work.

ARTICLE 2
SCOPE OF WORK

2.1 Performance of Work.

2.1.1 The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A, and the Schedule set forth in Exhibit H, all as revised pursuant to the terms of this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof.

2.1.2 The Company's current requirements for the Project are set forth in the Initial Scope of Work attached hereto as Exhibit A. No later than the date set forth therefor in the Initial Schedule attached hereto as Exhibit H, the Design/Builder shall submit to the Company (a) the Scope of Work Submittal Documents; and (b) the "**Design/Builder's Proposal**".

However, the parties acknowledge that the Design/Builder shall be entitled to select itself or an affiliate to perform all or part of the general contracting duties, so long as any fee payable for performance of such duties is part of, and not in addition to, the fee to be earned by the Design/Builder. The Company, Design/Builder, Architect, relevant engineers, and Contractor shall then promptly meet and confer about the Scope of Work Submittal Documents and the Design/Builder's Proposal. If the Company and Design/Builder agree on the Design/Builder's Proposal, they shall execute a "**Construction Modification**" that modifies this Agreement and sets forth the following: the Scope of Work Submittal Documents approved by the Company, the related schedule of values, Estimated Cost of the Work, Construction Overhead, Construction Fee, Construction Contingency, allowances, alternates, unit prices, the form of Contractor payment and performance bonds, the date on which the Design/Builder must receive the Construction Notice to Proceed, the dates of Substantial Completion and Final Completion of the Construction Work and Landscaping Work, a schedule for such Work, and any other information reasonably required by the Company. The Company's execution of the Construction Modification shall constitute a direction to the Design/Builder to commence performing the Final Scope of Work. If within ninety (90) days after the Design/Builder's submission of the Design/Builder's Proposal the parties have not executed a Construction Modification, then either party may terminate this Agreement by providing written notice to the other, such termination taking effect upon completion of the Construction Documents and full payment of the Cost of the Work, Design Fee, and Design Overhead for the Initial Scope of Work he Design/Builder shall have no obligation to perform any other Work or services.

2.2 Professional Standard.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 Use of Design Materials.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement (for example, if this Agreement is terminated pursuant to Section 2.1.2, the Company has paid all design-related amounts actually incurred by the Design/Builder). The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement. The Design/Builder and Architect expressly reserve the right to utilize and re-use their own style and approach to the design of similar projects.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 Local Conditions; Environmental Site Conditions.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that as of the date of the Construction Modification it will have taken steps reasonably necessary to ascertain the nature and location of the Work, and that it will have investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in th chedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or

Subcontractors), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so.

2.4.3 Below Grade Utilities. Unless otherwise set forth in Exhibit A, the Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Vista Del Sol IFP (as it relates to the Work), the Contract Documents listed on Exhibit C, or known as of the Effective Date to the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A). Any other Hazardous Materials besides those specifically identified in this Section 2.4.3 above are not included in the Scope of Work.

2.5 Scope of Work Submittal Documents and Construction Documents.

2.5.1 General. This Agreement constitutes an instruction for the Design/Builder to prepare the Construction Documents, and the Design/Builder has instructed the Architect and its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such approval, the Design/Builder shall cause the Architect and its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Section 2.1.2, Exhibit H and Exhibit J, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company. The Company acknowledges that the City (or the County and/or State, as applicable) will be responsible for issuing any applicable permits and final certificates of occupancy with respect to the Project and therefore the City (or the County and/or State, as applicable) will be the final approving authority for (i) the Scope of Work Submittal Documents and the Construction Documents and (ii) and conflicts as to which codes must be followed or which inspections are required in connection with the Scope of Work. Accordingly, the

Company shall in good faith work with the Design/Builder to resolve any comments the City (or the County and/or State, as applicable) may have to such Scope of Work Submittal Documents and the Construction Documents and the Company shall not unreasonably withhold its approval of any Scope of Work Submittal Documents and the Construction Documents approved by the City (or the County and/or State, as applicable). The Design/Builder shall not commence the Construction Work and Landscaping Work until the Parties have executed the Construction Modification.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company and the City with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Initial or Final Scope of Work requiring modification to one or more systems or other aspects of the Project which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. The Company acknowledges that any such revocation, modification or other change to its approval or to the Scope of Work may need to be re-approved by the City and/or any other applicable municipal or regulatory agency with approval authority over such modification and/or change and, accordingly, the Design/Builder shall be entitled to an equitable adjustment in th Schedule in accordance with the Change Order provisions of this Agreement to account for such requested modification and/or change. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H.

2.6 Legal Requirements.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof, equitably adjusting Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review.

Except to the extent the Contract Documents require the Company to obtain such approvals, permits, licenses and inspections, and to pay for any governmental fees, the Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits, licenses and inspections required by the Contract Documents to be secured by the Design/Builder. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 Services and Facilities.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within [redacted] Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 Warranties.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Vista Del Sol Offer and the general intent of the Vista Del Sol IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities in lieu of what is set forth in the Construction Documents, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. If the Design/Builder elects to reuse existing utilities pursuant to the foregoing, and Exhibit A contemplates Design/Builder's construction of new utilities, a deductive Change Order shall be issued for the cost of the utilities work no longer required. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude

warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Vista Del Sol Offer and the general intent of the Vista Del Sol IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in accordance with the Schedule, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion such building or group of buildings. If withi after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. The costs to correct Work which is not in accordance with the requirements of the Contract Documents shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid

Notwithstanding the foregoing, if the correction work referenced in this Section 2.8.4 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work and/or Landscaping Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance If the parties cannot agree,

such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work and Landscaping Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid by the Company Notwithstanding the foregoing, if the removal work referenced in this Section 2.8.10 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work or Landscaping Work, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule nd shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 Access by Company or United States Member.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 Use of Site.

The Design/Builder shall prepare a mobilization plan, prior to the start of the Construction Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall

outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement.

2.12 Patents, Trademarks, Copyrights.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 Rubbish; Debris; Cleanup.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents after Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 Permits, Fees and Notices.

2.14.1 To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 Shop Drawings, Product Data and Samples.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCAGCC Twentynine Palms (to the attention of Base Commander), Headquarters Marine Corps (to the attention of Military Housing Office ("**MHO**")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MCAGCC Twentynine Palms, and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 Tests and Inspections.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and, to the extent not already a responsibility of the Company under the Contract Documents (i.e., pursuant to Section 2.6.1.1 and 2.14 of this Agreement) the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Facility Engineering and Acquisition Division ("**FEAD**") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and FEAD may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule d shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents,

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Execution, Correlation and Intent.

2.17.1 Execution of Construction Modification. Execution of the Construction Modification by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 Labor and Materials; Liens.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens within _____ Days after written notice from the Company of the existence of such liens (or such shorter period as is

required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 Cutting and Patching.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 Uncovering of Construction Work.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule the costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule nd the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract

Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 Information and Services Required of the Company.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule n accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon ays prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 Activities on the Site by Company or Separate Contractors.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents.

The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorneys' fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 Assignment of Separate Contracts.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architects' agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 Company's Right to Stop the Work.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within ays and diligently pursue such cure thereafter. In the event that the cure is not commenced within such ay period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 Company's Right to Carry out the Work.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or

failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 Progress and Completion.

Subject to Section 2.1.2, the Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule.

4.2 Schedule Obligations.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the date of this Agreement and the Date of the executed Construction Modification, as appropriate. The Schedule shall set forth separate Substantial Completion Dates for each building. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 Intentionally Deleted.

4.4 Intentionally Deleted.

4.5 Intentionally Deleted.

4.6 Delays.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available any or all of the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, licenses, inspections, approvals and authorizations from federal, state, or local governments or quasi-governmental

agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by the Design/Builder.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on

account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay,

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth in the Construction Modification (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay liquidated damages ("**Liquidated Damages**") in an amount equal to 65% of the rental income attributable to such portion of the Work.

4.8 No Damages on Account of Delay.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement the

5.2 Schedule of Values.

As part of the Construction Modification, the Design/Builder will submit to the Company a schedule of values which sets forth the various portions of the Construction Work and Landscaping Work, These schedules of values shall be used as a basis for payment and shall be updated periodically. All estimated costs not allocated to a line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 Applications for Payment.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering the Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 Retainage.

5.5.1 With respect to the Initial Scope of Work,

5.5.2 With respect to Construction Work Retainage on that Work as outlined in, and defined in, the Construction Modification shall be withheld until such Construction Work is complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable directly to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of the Construction Work shall be released upon Substantial Completion of such Construction Work, less of the value of any uncompleted Construction Work or Punch list items relating to such buildings. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Construction Work or Punch list items shall be released upon completion of such uncompleted Construction Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within Days of Final Completion of the entire Construction Work.

5.6 Early Release of Subcontractor Retainage.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 Payment for On-Site and Off-Site Stored Materials.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 Title to Construction Work.

The Design/Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to the Company no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment, all

Construction Work for which Applications for Payment have been previously issued and payments received from the Company shall, to the best of the Design/Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder, Team Subcontractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Construction Work.

5.9 Withholding of Payment.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 Failure of Payment; Interest.

If the Company does not pay the Design/Builder within ays after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon amounts until payment of such amount owing has been received.

5.11 Substantial Completion.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a

comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 Partial Occupancy or Use.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Notwithstanding anything to the contrary, the Company acknowledges that no occupancy or use may take place unless and until the City has issued a Certificate of Occupancy for such portion of the Construction Work.

5.13 Final Completion and Final Payment.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue

shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 Allowances.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses; and

5.15 Superintendent.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 Documents and Samples at the Site.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 Contingency.

Each such Contingency shall be increased by amounts not expended on other line items in

the relevant schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in either or both Contingency line items as of the date of Final Completion of the entire Project, which shall be paid as set forth in Section 5.1.3. Notwithstanding the foregoing: (1) reduction in the line item amount for Landscape Amenity and Community Buildings in excess of f the value thereof shall require the approval of the Company; and (2) increase in the line item amount for General Conditions in excess of f the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 Changes.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 Change Directives.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in t the Schedule. If the Design/Builder receives a written communication signed by the Company, which the Design/Builder believes is a Change Directive, but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5

6.3 Change Proposals.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 Claims.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within ays after it becomes aware of the event giving rise to the Change Proposal. The Company shall have ays after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 Payment on Account of Change Orders and/or Excusable Delays.

In the event of a Change Order or Excusable Delays,

6.5.1 Construction Work and Landscaping Work.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described in the Construction Modification, [redacted]

6.6 Changes on Account of Delay in Commencement of Work.

In the event the commencement of the Construction Work is delayed beyond the date for such commencement set forth in the Construction Modification for any reason other than the fault of the Design/Builder, [redacted]

6.7 [redacted]

[redacted].

6.8 Time Extensions on Account of Change Orders.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 Care, Custody and Control by Design/Builder During Construction.

The Design/Builder shall be responsible for care, custody and control of each Site or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Site or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Site or portion thereof back to Company in accordance with Section 7.2 below.

7.2 Substantial Completion; Partial Occupancy or Use.

At Substantial Completion of the entire Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Site or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Site or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and

Subcontractors for loss or damage to the Site or portion thereof which may thereafter occur. In the event that loss or damage to the Site or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 Team Subcontractors.

The Design/Builder shall enter into a Team Subcontract with the Architect pursuant to which the Design/Builder shall delegate all design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under any bond relating to the Agreement.

8.2 Subcontracts.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest

of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 Self-Performed Work. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 Subcontractor Bids. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess of The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 Insurance to be Provided by the Design/Builder.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 Insurance to be Provided by the Company.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 Payment and Performance Bonds.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work at the Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor as of the time of commencement of the Construction Work, shall name the Design/Builder, the Company, and the Trustee as co-obligees, Prior to the commencement of the Work on any alternate under the Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees, and shall be in the forms set forth on Exhibit N-1 (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 Indemnification.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and

shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 Company Agreement.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 Safety of Persons and Property.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

10.2.3 Use of Explosives. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Construction

Work, the Design/Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4).

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger anyone's safety.

10.3 Security.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 Damage to Property at the Site.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 Damage to Property of Others.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 Failure of Design/Builder to Repair Damage.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such ay period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 Emergencies.

In an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 Disputes between Company and Design/Builder.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 Dispute Resolution Procedures.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within ays of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved withi Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess o then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration

Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 Design/Builder Events of Default.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, afte Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, afte ays written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within ays of its institution.

12.2 Remedies of the Company upon a Design/Builder Event of Default.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 Company Events of Default.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of ays through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 Remedies of the Design/Builder upon a Company Event of Default.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon ays additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to

materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 Representations and Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 Termination or Suspension for Convenience.

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Governing Law.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 Successors and Assigns.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 Written Notice.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 Commencement of Statutory Limitation Period and Statute of Repose Period.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 Modifications.

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

13.6 Interpretation.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular

number shall include the plural number and vice versa, unless relating to all supplements and/or amendments to any exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 Whole Agreement.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to that certain Vista Del Sol Design/Builder's Consent Agreement dated as of the Effective Date executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 Accounting Records.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of [redacted]ears after final payment, or for such longer period as may be required by law.

13.10 Limitation of Liability.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 Audit and Records.

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated unti after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

LIST OF EXHIBITS

Exhibit A	-	Initial Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	Environmental Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Governmental Approvals
Exhibit G	-	Intentionally Omitted
Exhibit H	-	Initial Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination

EXHIBIT A

EXHIBIT A

EXHIBIT B

EXHIBIT C

ENVIRONMENTAL DOCUMENTS

1. Environmental Condition of Property Vista Del Sol 801 Housing Site, Twentynine Palms, California; July 2010. Contract Number: N62473-09-D-2603. Task Order 0020.

2. REVISED FINAL PHASE I ENVIRONMENTAL SITE ASSESSMENT**;** 801 Housing – Vista Del Sol Camp Pendleton & Quantico Housing; MAGTFTC Twentynine Palms, California.

3. Final Environmental Assessment; Vista Del Sol Housing in Twentynine Palms, San Bernardino County, California; June 2010

4. FONSI (Finding of No Significant Impacts) for a Public Private Venture between the Department of the Navy and a Private Entity in the form of a Limited Liability Company, at the Vista Del Sol Military Family Housing Complex in Twentynine Palms, California. June 30, 2010.

5. General Decision Number: CA080028 (8/21/2009) CA 28

6. Geotechnical Investigation Vista Del Sol Housing Twentynine Palms, California, dated October 25, 2010, prepared

EXHIBIT D

EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the approvals for which the Company is responsible prior to commencement of any construction activities by the Design/Builder:

Department of the Navy:

1. Prior to the commencement of construction, a demolition Plan will be submitted to and approved by the DoN.

2. Obtain written approval by the DoN on the Scope of Work Submittal Documents and the final Construction Documents, which will be submitted in accordance with Exhibit J of and elsewhere in this Agreement.

3. Provide all approvals and oversight, if necessary, to ensure that the Final Scope of Work as submitted by the Design/Builder satisfies all natural and cultural resources requirements as outlined in the Company documents.

Construction Consultant Review:

4. The Company shall execute a Construction Consultant Agreement with the Construction Consultant to perform the duties described in Section 5.07(b)(iii) of the Operating Agreement for the Project. The Design/Builder understands that such Construction Consultant Agreement shall also include certain code compliance review with respect to the UFC and AT/FP compliance.

Utilities:

5. The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging utilities.

Municipal/Regulatory Approvals:

6. The Company shall assist the Design/Builder in obtaining any and all necessary permits, licenses, inspections and/or approvals necessary for the completion of the Project (including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes) from applicable local, state and federal governmental and quasi-governmental authorities (including agency) including, but not limited to, the City of Twentynine Palms, CA, the Twentynine Palms Water District, the Twentynine Palms Fire Department, San Bernardino County, CA, and the Regional Water Quality

Control Board. The Design/Builder understands that the DoN will assist the Company in working with the Design/Builder to obtain the approvals outlined in the foregoing sentence, and accordingly, that the DoN will have the right to participate in direct discussions with the applicable local, state and federal governmental and quasi-governmental authorities (including agency) including, but not limited to, the City of Twentynine Palms, CA, the Twentynine Palms Water District, the Twentynine Palms Fire Department, San Bernardino County, CA, and the Regional Water Quality Control Board. The Design/Builder shall be responsible for interfacing with all of the approving authorities and obtaining the required permits, approvals, inspections and licenses during the planning and approval process. The Company shall be responsible for all fees payable to the approving authorities associated with the planning and approval process.

Group Approvals:

7. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

8. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Site, such approvals shall be the responsibility of the Company.

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

EXHIBIT I

SITE DESCRIPTION

That certain land owned in fee simple by the Company serving Marine Corps Air Ground Combat Center, Twentynine Palms, California, commonly referred to as the Vista Del Sol neighborhood and part of the Vista Del Sol Project (as such term is defined in the Operating Agreement), as more particularly identified and described in Exhibit A-11 to the Operating Agreement, together with any improvements located thereon.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval withi Days of requested review for Design Materials and Design Work. The Company acknowledges that the Architect and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within th day review time, then after Business Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. Any comments or modifications made after the planning and approval process has been started with the municipal and state authorities could necessitate a delay or restarting the approval process. The Company will make every effort to capture all of their comments into the allotted review period (as defined in Exhibit H) prior to commencement of the approval process so as to prevent delays to the project. The Design/Builder and its Architect will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document pending approval of the applicable local, state and federal governmental or quasi-governmental authority with jurisdiction over the Project.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability: Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions:

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

TWENTYNINE PALMS - VISTA DEL SOL - 801 HOUSING

DESIGN GROUP MEMBERS

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[TO BE INCLUDED IN THE CONSTRUCTION MODIFICATION]

EXHIBIT O

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to in this Exhibit P as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the Wage Decision applicable to (i) the Marine Palms New Build Site and the O-6 Renovation Site attached hereto as Appendix P-1, and (ii) the Phase VI Stuart Mesa Site, attached hereto as Appendix P-2, and the Payrolls and Basic Records provision. The provisions of the Davis-Bacon Act, as implemented by Federal Acquisition Regulation (FAR) 52.222-6, applicable to this Agreement are provided below.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder to Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. **Davis-Bacon Act (Jul 2005)**

(a) *Definition*.—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall

be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

> (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
>
> (ii) The classification is utilized in the area by the construction industry.
>
> (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the: Wage and Hour Division, Employment Standards Administration,

U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (e) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

CA080028 MOD 30 REVISED 11/13/09 CA28 (see attached for complete copy)

CA080028 MOD 30 REVISED 11/13/09 CA28
******** THIS WAGE DETERMINATION WAS REPLACED ON 11/13/09********
General Decision Number: CA080028 10/30/2009

Superseded General Decision Number: CA20070028

State: California

Construction Type: Residential

Counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties in California.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/08/2008
1	02/15/2008
2	02/22/2008
3	03/07/2008
4	03/28/2008
5	04/04/2008
6	05/09/2008
7	05/23/2008
8	07/04/2008
9	07/11/2008
10	08/01/2008
11	08/08/2008
12	08/15/2008
13	08/29/2008
14	09/12/2008
15	10/03/2008
16	11/14/2008
17	12/05/2008
18	01/02/2009
19	01/16/2009
20	02/06/2009
21	02/27/2009
22	03/06/2009
23	04/17/2009
24	05/01/2009
25	06/05/2009
26	07/03/2009
27	08/21/2009
28	10/09/2009
29	10/16/2009
30	10/30/2009

ASBE0005-002 08/07/2007

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems)	$ 37.01	10.84
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls,		

floors, ceilings and curtain
walls).....$ 20.76 10.23

ASBE0005-004 08/07/2006

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....	$ 19.55	6.38

BRCA0004-001 05/01/2009

	Rates	Fringes
Bricklayer; Marble Setter		
Los Angeles County.....	$ 36.00	12.15
Orange County.....	$ 34.55	11.56
Riverside & San Bernardino Counties.....	$ 35.25	10.62
Ventura County.....	$ 33.36	11.98

BRCA0004-004 11/01/2008

IMPERIAL

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	$ 35.00	12.20

BRCA0004-009 05/01/2009

SAN LUIS OBISPO AND SANTA BARBARA COUNATIES

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	$ 35.20	10.60

BRCA0018-001 06/01/2008

	Rates	Fringes
MARBLE FINISHER.....	$ 25.52	9.08
TILE FINISHER.....	$ 21.07	7.88

BRCA0018-002 08/01/2008

SAN LUIS OBISPO AND SANTA BARBARA

	Rates	Fringes
TILE LAYER.....	$ 29.79	9.34

BRCA0018-003 06/01/2008

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO &
VENTURA

	Rates	Fringes
TILE LAYER	$ 32.05	11.99

BRCA0018-010 09/01/2008

	Rates	Fringes
TERRAZZO FINISHER	$ 26.59	9.62
TERRAZZO WORKER/SETTER	$ 33.63	10.46

CARP0409-003 07/01/2009

	Rates	Fringes
Drywall		
(1) Work on Wood-Framed Single Family Homes, and Wood-Framed Apartment Buildings up to and including 4 Stories		
Drywall Installer/Lather	$ 21.00	10.58
Stocker/Scrapper	$ 10.00	6.67
(2) All other Work		
Drywall Installer/Lather	$ 37.35	10.58
Stocker/Scrapper	$ 10.00	6.67

CARP0409-004 07/01/2008

Work on wood frame single family homes and apartments up to and including 4 stories:

	Rates	Fringes
CARPENTER		
Cabinet installer	$ 26.16	9.61
Fence builder	$ 27.78	9.61
Framer & finish carpenter	$ 29.55	9.61
Insulation installer	$ 18.00	8.21
Roof loader of shingles	$ 16.32	8.82
Shingler	$ 25.16	9.19
Subterranean garage concrete construction and carpenters performing on grade slab concrete construction	$ 25.13	9.61

CARP0409-009 07/01/2008

	Rates	Fringes
Modular Furniture Installer	$ 19.00	7.41

ELEC0011-003 01/26/2009

LOS ANGELES

	Rates	Fringes
ELECTRICIAN (does not include fire alarm, hold-up alarm, burglar alarm and surveillance systems)	$ 20.20	3%+7.74

ELEC0011-009 07/27/2009

COMMUNICATIONS AND SYSTEMS WORK

	Rates	Fringes
Communications System		
Installer	$ 26.83	3%+8.00
Technician	$ 28.63	3%+8.00

SCOPE OF WORK: Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background - foreground music, intercom and telephone interconnect, microwave transmission, multi-media, multiplex, nurse call systems, radio page, burglar alarms and fire alarm (see last paragraph below).

Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems.

Fire alarm work shall be performed at the current inside electrician total cost package.

ELEC0413-002 03/01/2009

SANTA BARBARA COUNTY

	Rates	Fringes
Electricians	$ 17.50	3%+0.50

WORK AT VANDENBERG AFB: $3.75 additional per hour.

ELEC0440-002 12/01/2008

RIVERSIDE

	Rates	Fringes
ELECTRICIAN	$ 18.00	3%+7.45

ELEC0441-002 12/01/2008

ORANGE

	Rates	Fringes
ELECTRICIAN	$ 24.21	3%+3.90

ELEC0477-003 06/01/2005

SAN BERNARDINO

	Rates	Fringes
ELECTRICIAN	$ 19.00	3%+7.26

ELEC0569-003 12/01/2006

IMPERIAL

	Rates	Fringes
ELECTRICIAN		
1 to 3 Stories	$ 21.00	3%+2.55
4 Stories		
Electrical subcontracts of $500,000 or less	$ 32.45	3%+11.08
Electrical subcontracts over $500,000	$ 35.45	3%+11.08

ELEC0639-002 03/01/2009

SAN LUIS OBISPO

	Rates	Fringes
ELECTRICIAN	$ 18.25	3%+4.50

ELEC0952-002 03/30/2009

VENTURA

	Rates	Fringes
CABLE SPLICER		
All work within 32 road miles or less from the nearest base point	$ 39.71	3%+16.38
ELECTRICIAN		
All work within 32 road miles or less from the nearest base point	$ 36.10	3%+16.38

ALL WORK MORE THAN 32 ROAD MILES FROM NEAREST BASE POINT: Add $5.00 to the basic hourly rate. BASE POINTS: the main Post Office in the cities of Camarillo, Oak View, Oxnard, Santa Paula and Ventura.

ELEV0008-004 01/01/2009

SAN LUIS OBISPO

	Rates	Fringes
ELEVATOR MECHANIC	$ 53.66	18.285

FOOTNOTE:
PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

ELEV0018-004 01/01/2009

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SANTA BARBARA AND VENTURA

	Rates	Fringes
ELEVATOR MECHANIC	$ 44.10	18.285

FOOTNOTE:
PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

ENGI0012-001 07/01/2009

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Cranes, Piledriving & Hoisting)		
GROUP 1	$ 38.18	17.22
GROUP 2	$ 38.96	17.22
GROUP 3	$ 39.25	17.22
GROUP 4	$ 39.39	17.22
GROUP 5	$ 39.61	17.22
GROUP 6	$ 39.72	17.22
GROUP 7	$ 39.84	17.22
GROUP 8	$ 40.01	17.22
GROUP 9	$ 40.18	17.22
GROUP 10	$ 41.18	17.22
GROUP 11	$ 42.18	17.22
GROUP 12	$ 43.18	17.22
GROUP 13	$ 44.18	17.22
POWER EQUIPMENT OPERATOR		
GROUP 1	$ 36.83	17.22
GROUP 2	$ 37.61	17.22
GROUP 3	$ 37.90	17.22
GROUP 4	$ 39.39	17.22
GROUP 5	$ 40.49	17.22
GROUP 6	$ 39.61	17.22
GROUP 7	$ 40.71	17.22
GROUP 8	$ 39.72	17.22
GROUP 9	$ 40.82	17.22
GROUP 10	$ 39.84	17.22
GROUP 11	$ 40.94	17.22
GROUP 12	$ 40.01	17.22
GROUP 13	$ 40.11	17.22
GROUP 14	$ 40.14	17.22
GROUP 15	$ 40.22	17.22
GROUP 16	$ 40.34	17.22
GROUP 17	$ 40.51	17.22
GROUP 18	$ 40.61	17.22
GROUP 19	$ 40.72	17.22
GROUP 20	$ 40.84	17.22
GROUP 21	$ 41.01	17.22
GROUP 22	$ 41.11	17.22
GROUP 23	$ 41.22	17.22
GROUP 24	$ 41.34	17.22
GROUP 25	$ 41.51	17.22

PREMIUM PAY:
$3.75 per hour shall be paid on all Power Equipment Operator work on the followjng Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified

as a concrete mobile mixer operator.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine oeprator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (side steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled

tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9

cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any

combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

IRON0002-001 07/01/2009

	Rates	Fringes
IRONWORKER		
Fence Erector	$ 26.58	15.24
Ornamental, Reinforcing and Structural	$ 33.00	23.71

PREMIUM PAY:

$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0300-002 07/01/2009

	Rates	Fringes
Brick Tender	$ 27.17	14.75

LABO0300-004 07/01/2009

Residential, 4 Stories

	Rates	Fringes
LABORER		
GROUP 1	$ 26.33	14.75
GROUP 2	$ 26.88	14.75
GROUP 3	$ 27.43	14.75
GROUP 4	$ 28.98	14.75
GROUP 5	$ 29.33	14.75

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; post hole digger (manual);Railroad maintenance, repair track person and road beds;Streetcar and railroad construction track laborers; Rigging andsignaling; Scaler; Slip form raiser; Slurry seal crew (mixer operator, applicator operator, squeegee person, shuttle person, top person), filling of cracks by any method on any surface; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asbestos abatement; Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix

trucks, such as walls, slabs, decks, floors, foundation, footings, curb, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer (lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; operation of remote controlled robotic tools in connection with Laborer's work; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Power post hole digger; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Any worker exposed to raw sewage; Asphalt raker, lute person, ironer, asphalt dump person and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt-rubber distributor boot person; Laser beam in connection with laborers' work; Over-size concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in theditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic,conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting,Porta Shot-Blast; Traffic lane closure, Certified.

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing;

Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all types of mechanical drills without regard to the form of motive power; Toxic waste removal; Boring system electronic tracking locator

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LABO0300-006 08/05/2009

	Rates	Fringes
Laborers: (1 to 3 Stories)		
Plaster Clean-Up Laborer....	$ 24.65	14.70
Plaster Tender.....	$ 27.20	14.70
Laborers: (4 Stories)		
Plaster Clean-up Laborer....	$ 26.65	14.70
Plaster Tender.....	$ 29.20	14.70

Work at Military Bases - $3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, George AFB, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

LABO0300-007 07/01/2004

Residential, 3 Stories and under

	Rates	Fringes
Laborers		
(1) Cleanup, Fencing (Chain Link or Wood), Landscaping.....	$ 19.07	8.67
(2) All Other Work.....	$ 20.07	8.67

LABO0882-003 01/01/2009

	Rates	Fringes
Asbestos Removal Laborer.....	$ 26.15	13.25

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos containing material and toxic waste (including lead abatement and any other toxic material), encapsulation, enclosure and disposal of asbestos containing materials and toxic waste(including lead abatement and any other toxic materials) by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2009

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	$ 27.05	10.40
(2) Vehicle Operator/Hauler.	$ 27.22	10.40
(3) Horizontal Directional Drill Operator.....	$ 29.07	10.40
(4) Electronic Tracking Locator.....	$ 31.07	10.40
Laborers: (STRIPING/SLURRY		

SEAL)

GROUP 1	$ 28.50	13.56
GROUP 2	$ 29.80	13.56
GROUP 3	$ 31.81	13.56
GROUP 4	$ 33.55	13.56

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-005 08/01/2009

	Rates	Fringes
PAINTER (including lead abatement)		
Imperial, Los Angeles, Orange, Riverside & San Bernardino		
(1) Repaint	$ 26.05	9.01
(2) All other work	$ 29.32	9.01
San Luis Obispo, Santa Barbara & Ventura		
(1) Repaint	$ 23.10	9.01
(2) All other work	$ 27.39	9.01

PAIN0036-011 10/01/2008

IMPERIAL, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA COUNTIES

	Rates	Fringes
DRYWALL FINISHER/TAPER	$ 18.00	7.07

PAIN0036-014 10/01/2009

IMPERIAL

	Rates	Fringes
GLAZIER	$ 36.55	14.42

PAIN0036-018 06/01/2009

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SANTA BARBARA AND VENTURA

	Rates	Fringes
GLAZIER	$ 36.90	16.73

FOOTNOTE: Additional $1.25 per hour for work in a condo, from the third (3rd) floor and up. Additional $1.25 per hour for work on the outside of the building from a swing stage or any suspended contrivance, from the ground up.

PAIN0036-020 02/01/2009

IMPERIAL

	Rates	Fringes
SOFT FLOOR LAYER	$ 26.77	11.75

PAIN0169-007 01/14/2009

SAN LUIS OBISPO

	Rates	Fringes
GLAZIER	$ 29.68	14.10

PAIN1247-003 05/01/2009

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
SOFT FLOOR LAYER	$ 30.85	9.54

PLAS0200-002 08/05/2009

IMPERIAL, KERN, LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
PLASTERER		
1 - 3 stories	$ 32.38	8.88
4-stories	$ 35.41	9.88

PLAS0500-003 07/01/2007

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 28.00	16.45

PLUM0016-011 07/01/2009

	Rates	Fringes
PLUMBER/PIPEFITTER		
Residential	$ 29.97	12.91

PLUM0250-001 01/02/2006

LOS ANGELES AND ORANGE

	Rates	Fringes
REFRIGERATION MECHANIC		
Refrigeration Fitter	$ 33.30	13.95

ROOF0036-001 08/01/2008

LOS ANGELES, ORANGE, RIVERSIDE, SAN BERNARDINO, SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
Roofer	$ 28.49	6.37

FOOTNOTE: Pitch premium: Work on which employees are exposed to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive $1.75 per hour "pitch premium" pay.

ROOF0045-003 08/01/2008

IMPERIAL

	Rates	Fringes
Roofer	$ 23.60	6.48

SFCA0669-005 04/01/2008

AREA 1: IMPERIAL COUNTY; LOS ANGELES COUNTY (does not include the city of Pomona, Catalina Island, and that part of Los Angeles County within 25 miles of the city limits of Los Angeles); ORANGE COUNTY (does not include Catalina Island; San Clemente Island; City of Santa Ana; and remainder of Orange County within 25 miles of the city limits of Los Angeles); RIVERSIDE COUNTY; AND SAN BERNARDINO COUNTY (does not include the northern part of City of Chino, or the cities of Montclair and Ontario)

AREA 2: SAN LUIS OBISPO, SANTA BARBARA COUNTIES, VENTURA (does not include Port Hueneme, Port Mugu, the city of Santa Paula, and that part of Ventura County within 25 miles of the city limits of Los Angeles) COUNTIES

	Rates	Fringes
SPRINKLER FITTER		
Area 1	$ 24.64	2.25
Area 2	$ 24.11	2.25

SFCA0709-002 01/01/2009

LOS ANGELES COUNTY (the city of Pomona, Catalina Island, and that part of Los Angeles County within 25 miles of the city limits of Los Angeles); ORANGE COUNTY (San Clemente Island, the city of Santa Ana, and that part of Orange County within 25 miles of the city limits of Los Angeles); SAN BERNARDINO COUNTY (the northern part of the city of Chino, and the cities of Montclair and Ontario); VENTURA COUNTY (Port Hueneme, Port Mugu, the city of Santa Paula, and that part of Ventura County within 25 miles of the city limits of Los Angeles)

	Rates	Fringes
SPRINKLER FITTER	$ 26.66	10.75

SHEE0105-001 07/01/2009

AREA 1: LOS ANGELES COUNTY (South of a straight line drawn between gorman and Big Pines, excluding the area South of Imperial Highway East of the Los Angeles River, excluding the cities of Long Beach, Claremont, and Pomona, excluding Catalina Island)

AREA 2: LOS ANGELES (Remainder), ORANGE, RIVERSIDE & SAN BERNARDINO COUNTIES

Work on general sheet metal and heating and air conditioning on single family dwellings, multiple family dwellings, track homes and apartment buildings individually conditioned by separate and independent units or systems

	Rates	Fringes
SHEET METAL WORKER		
AREA 1	$ 23.80	6.29
AREA 2	$ 29.19	13.84

SHEE0206-003 07/01/2008

IMPERIAL

	Rates	Fringes
Sheet Metal (TECHNICIAN)	$ 23.99	4.71
SHEET METAL WORKER	$ 32.36	15.72

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

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* SHEE0273-001 08/01/2009

SAN LUIS OBISPO, SANTA BARBARA AND VENTURA

	Rates	Fringes
SHEET METAL WORKER	$ 37.24	15.47

HOLIDAYS: New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Indepdendence Day, Labor Day, Veterans Day,Thankisgiving Day & Friday after, Christmas Day

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TEAM0011-001 07/01/2008

	Rates	Fringes
Truck drivers:		
GROUP 1	$ 26.44	18.24
GROUP 2	$ 26.59	18.24
GROUP 3	$ 26.72	18.24
GROUP 4	$ 26.91	18.24
GROUP 5	$ 26.94	18.24
GROUP 6	$ 26.97	18.24
GROUP 7	$ 27.22	18.24
GROUP 8	$ 27.47	18.24
GROUP 9	$ 27.67	18.24
GROUP 10	$ 27.97	18.24
GROUP 11	$ 28.47	18.24
GROUP 12	$ 28.90	18.24

WORK ON ALL MILITARY BASES - $3.00 PER HOUR ADDITIONAL:
[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB, El Centro Naval Facility, Fort Irwin, George AFB, Marine Corps Logistics Base at Nebo & Yermo, Mountain Warfare Training Center, Bridgeport, Point Arguello, Point Conception, Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person ($0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work; Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - $1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an

interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

EXHIBIT G-14

AC RENO DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

DESIGN/BUILD AGREEMENT

(AC Renovation - O'Neill Heights and San Luis Rey)

By and Between

Camp Pendleton & Quantico Housing, LLC

and

as Design/Builder

Dated as of June 8, 2011

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DESIGN/BUILD AGREEMENT
(AC Renovation - O'Neill Heights and San Luis Rey)

This Design/Build Agreement (AC Renovation - O'Neill Heights and San Luis Rey) (this "**Agreement**") dated as of June 8, 2011 and effective for all purposes as of June 8, 2011 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**ACM**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.2 "**Additional Services Fee**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.3 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.4 "**Agreement**" means this Design/Build Agreement (AC Renovation and all amendments and/or modifications hereto executed by the Parties.

1.5 "**Alternate**" shall have the meaning set forth in Section 9.3.2 hereof.

1.6 "**Amended and Restated Ground Lease**" shall have the meaning set forth in the Operating Agreement.

1.7 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.8 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.9 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.10 "**CCIP**" shall have the meaning set forth in Exhibit D hereof.

1.11 "**Certificate of Substantial Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.12 "**Certificate of Final Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.13 "**Change Directive**" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.14 "**Change Order**" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.15 "**Change Proposal**" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.16 "**Claims**" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.17 "**Company**" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.18 "**Company Event of Default**" shall have the meaning set forth in Section 12.3 hereof.

1.19 "**Company Indemnified Parties**" means the Company, its members, agents, partners and employees.

1.20 "**Construction Agreement**" means that certain Construction Agreement (AC Renovation- O'Neill Heights and San Luis Rey) between the Contractor and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.22 "**Construction Consultant**" means [redacted] its successors and assigns.

1.23 "**Construction Documents**" means the plans and specifications prepared by a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Construction Documents must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.24 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.25 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project.

1.26 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.27 "**Contract Documents**" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.28 "**Contractor**" means [redacted]

1.29 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Final Completion of the Work.

1.30 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.31 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D. [redacted]

1.32 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.33 "**Day**" **or** "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "**Business Day**" or "**Business Days**" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of California are open for business.

1.34 "**Design/Builder**" means

1.35 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.36 "**Design/Builder Indemnified Parties**" means the Design/Builder and the Contractor, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.37 "**Design/Builder Initiated Change Orders**" means Design/Builder initiated Change Orders other than any Force Majeure Change Orders.

1.38 "**Design Group**" means all engineers having a contract with the Design/Builder to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto.

1.39 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.40 "**Design Work**" means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.41 "**DoN**" means the United States of America, Department of the Navy.

1.42 "**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement.

1.43 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.44 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.45 "**Fee**" means

1.46 "**Final Completion" or "Finally Complete**" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.47 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractor), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.49 "**Governmental Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.50 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.51

1.52 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.53 "**LBP**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.54 "**Managing Member**" means hich is the managing member of the Company.

1.55 "**Mobilization Plan"** shall have the meaning set forth in Section 2.11 hereof.

1.56 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.57 "**Notice to Begin Design**" means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.58 "**Operating Agreement**" means that certain Fourth Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of January 15, 2010, as amended from time to time.

1.59 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.60 "**Overhead**" means

1.61 "**Party**" **or** "**Parties**" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.62 "**Payment and Performance Bonds**" means the payment bond and performance bonds issued by a Surety, in the most current form of American Institute of Architects, AIA Document A312 (Performance Bond and Payment Bond), covering the faithful performance and completion of the Construction Work at the Site, including payment for all materials and labor furnished or supplied in connection with such Construction Work, by the Contractor, as required under the Construction Agreement.

1.63 "**Product Data**" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.64 "**Project**" means the facilities located on the Site, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.65 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.66 "**Resident Officer in Charge of Construction**" **or** "**ROICC**" shall have the meaning set forth in Section 2.16.1 hereof.

1.67 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.68 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.70 "**Schedule**" means the schedule attached hereto as Exhibit H, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work at the Site. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.71 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.72 "**Scope of Work Submittal Documents**" means the drawings, specifications and other documents prepared for the Design/Builder (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Scope of Work Submittal Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project, and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction

Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.73 "**Self-Performed Work**" shall have the meaning set forth in Section 8.3 hereof.

1.74 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.75 "**Shop Drawings**" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.76 "**Site**" means the property identified on Exhibit I attached hereto, and any other real property on which the Work will be performed.

1.77 "**Subcontract**" means an agreement between the Contractor or the Design/Builder and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.78 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Design/Builder or the Contractor for the provision of labor, materials or other services required to be performed by the Design/Builder under this Agreement.

1.79 "**Substantial Completion**" **or** "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.80 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.81 "**Team Subcontract**" means an agreement between the Contractor and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.82 "**Team Subcontractor**" means the Contractor.

1.83 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.84 "**Work**" **or** "**Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work and Construction Work.

ARTICLE 2
SCOPE OF WORK

2.1 **Performance of Work**.

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing the Team Subcontractor and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A, and the Schedule set forth in Exhibit H, as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the Scheduled Date(s) of Substantial Completion, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 **Professional Standard**.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractor and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractor or Subcontractors, except as otherwise specifically provided herein.

2.3 **Use of Design Materials**.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with the Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and

shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 **Local Conditions; Environmental Site Conditions**.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement or the Contract Documents listed on Exhibit C, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the [redacted] Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractor or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to, LBP and ACM), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

2.5 **Scope of Work Submittal Documents and Construction Documents**.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such

approval, the Design/Builder shall cause its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibit H and Exhibit J, and in accordance with the dates therefor set forth in the Schedule set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H.

2.6 **Legal Requirements**.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required

to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting the Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 **Services and Facilities**.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractor, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 **Warranties**.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities in lieu of what is set forth in the Construction Documents, subject to Exhibit A, if in the reasonable opinion of the engineer for the Project, the utilities are in satisfactory condition. If the Design/Builder elects to reuse existing utilities pursuant to the foregoing, and Exhibit A contemplates Design/Builder's construction of new utilities, a deductive Change Order shall be issued for the cost of the utilities work no longer required. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Intentionally Deleted.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in accordance with the Schedule, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion such building or group of buildings. If within after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to after Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. The costs to correct Work which is not in accordance with the requirements of the Contract Documents shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid Notwithstanding the foregoing, if the correction work referenced in this Section 2.8.4 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance, If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. Notwithstanding the foregoing, if the removal work referenced in this Section 2.8.10 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule and shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.9

2.10 **Access by Company or United States Member**.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 **Use of Site**.

The Design/Builder shall prepare a mobilization plan, prior to the start of the Construction Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in th Schedule in accordance with the Change Order provisions of this Agreement.

2.12 **Patents, Trademarks, Copyrights**.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or

the Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 **Rubbish; Debris; Cleanup**.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents after Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 **Permits, Fees and Notices**.

Unless otherwise provided in the Contract Documents or unless designated a Governmental Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 **Shop Drawings, Product Data and Samples**.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCB Camp Pendleton (to the attention of Base Commander), Headquarters Marine Corps (to the attention of Military Housing Office ("**MHO**")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MCB Camp Pendleton, and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed ays.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 **Tests and Inspections**.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Resident Office in Charge of Construction ("**ROICC**") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing,

inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule nd shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 **Execution, Correlation and Intent**.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 **Labor and Materials; Liens**.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractor, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit the Team Subcontractor, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens within Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 **Cutting and Patching**.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 **Uncovering of Construction Work**.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule the costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross

negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule nd the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 **Information and Services Required of the Company**.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with the Team Subcontractor, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the

Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule n accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 **Activities on the Site by Company or Separate Contractors**.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and the Team Subcontractor and Subcontractors with the

activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule nd shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorneys' fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule If it is determined that the Design/Builder was not at fault, all costs of defense, including attorneys' fees, shall be paid by the Company in accordance with the Change Order provisions of this Agreement.

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 **Assignment of Separate Contracts**.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's and/or Contractor's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 **Company's Right to Stop the Work**.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 **Company's Right to Carry out the Work**.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with

diligence and promptness, the Company may after such [redacted]ay period give the Design/Builder a second written notice to correct such deficiencies within such [redacted] Day period. If the Design/Builder within such [redacted]Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 **Progress and Completion**.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule attached hereto as Exhibit H.

4.2 **Schedule Obligations**.

4.2.1 Contract Schedule. The construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define the construction activities, their sequences and elapsed completion time from the date of the Construction Notice to Proceed. The Schedule shall set forth separate Substantial Completion Dates for each group of buildings. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 **Intentionally Deleted**.

4.4 **Intentionally Deleted**.

4.5 **Intentionally Deleted**.

4.6 **Delays**.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available access to housing units in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, approvals and authorizations from federal, state, or local governments or quasi-governmental agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed building conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, unforeseen existing code violations, limited access to units, impairing Design/Builder's ability to perform the Work.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number

of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay,

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay liquidated damages ("**Liquidated Damages**") in an amount

4.8 **No Damages on Account of Delay**.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the

Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 **Schedule of Values**.

The Design/Builder has submitted to the Company, and the Parties (including the United States Member) have agreed upon the schedule of values shown in Exhibit E which sets forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 **Applications for Payment**.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering the Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than th ay of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess o or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 **Retainage**.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on the Construction Work shall be withheld until such Construction Work is complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable directly to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Retainage withheld on account of the Construction Work shall be released upon Substantial Completion of such Construction Work, les of the value of any uncompleted Construction Work or Punch list items relating to such buildings. Retainage withheld on account of uncompleted Construction Work or Punch list items shall be released upon completion of such uncompleted Construction Work or Punch list items. All remaining Retainage shall be fully released withi Days of Final Completion of the entire Construction Work.

5.6 **Early Release of Subcontractor Retainage**.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 **Payment for On-Site and Off-Site Stored Materials**.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 **Title to Construction Work**.

The Design/Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to the Company no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and

payments received from the Company shall, to the best of the Design/Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder, Team Subcontractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Construction Work.

5.9 **Withholding of Payment**.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 **Failure of Payment; Interest**.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule hall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 **Substantial Completion**.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the

Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than [redacted]ays after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 **Partial Occupancy or Use**.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 **Final Completion and Final Payment**.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If the Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 **Allowances**.

tems covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to

employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses; and

5.15 **Superintendent**.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 **Documents and Samples at the Site**.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 **Contingency**.

The Design/Builder and the Company acknowledge that the GMP contains a line item entitled "Contingency," and the schedule of values attached as Exhibit E, shows that the initial amount of the Contingency is Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project,

which shall be paid as set forth in the Operating Agreement. Notwithstanding the foregoing, increase in the line item amount for General Conditions in excess of f the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 **Changes**.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 **Change Directives**.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in t he Schedule. If the Design/Builder receives a written communication signed by the Company, which the Design/Builder believes is a Change Directive, but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment.

When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5

6.3 **Change Proposals**.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 **Claims**.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 **Payment on Account of Change Orders and/or Excusable Delays**.

6.5.1.2

6.5.1.3

6.5.2 Design Work. For Change Orders including additional Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A,

6.6 **Changes on Account of Delay in Commencement of Work**.

In the event the commencement of the Project is delayed beyond June 10, 2011 for any reason other than the fault of the Design/Builder,

6.7

6.8 **Time Extensions on Account of Change Orders**.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 **Care, Custody and Control by Design/Builder During Construction**.

The Design/Builder shall be responsible for care, custody and control of the Project, or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders related to the Project from issuance of the Construction Notice to Proceed until Final Completion. The Design/Builder shall not be responsible for damages, care, custody and control of the existing housing units unless damage is the direct result from the Design/Builder or associated contractors.

7.2 **Substantial Completion; Partial Occupancy or Use**.

At Substantial Completion of the Work, or portion thereof, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Site or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project or portion thereof which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
SUBCONTRACTORS

8.1 **Team Subcontractors**.

The Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract

Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 **Subcontracts**.

8.2.1 Incorporation of Contract Documents. The Design/Builder shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 **Self-Performed Work**. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 **Subcontractor Bids**. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess of The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 **Insurance to be Provided by the Design/Builder**.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 **Insurance to be Provided by the Company**.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 **Payment and Performance Bonds**.

9.3.1 The Design/Builder shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds. The Design/Builder shall deliver the Payment and Performance Bonds prior to, and as a condition precedent to, commencement of the Construction Work at the Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder and the Company as co-obligees, Prior to the commencement of the Work on any alternate under the Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds issued pursuant to this Section

(including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder, the Company and the Trustee as co-obligees, and shall be in the forms set forth on Exhibit N-1 (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.4 **Indemnification**.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 **Company Agreement**.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 **Safety Precautions and Programs**.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 **Safety of Persons and Property**.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4). All costs incurred by the Design/Builder in connection with its obligations under this Section 10.2.4 shall be paid as Cost of the Work

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger anyone's safety.

10.3 **Security**.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Site during the actual hours Work is being performed by the Design/Builder.

10.4 **Damage to Property at the Site**.

The Design/Builder shall be responsible for damage to property only to the extent related to direct damage caused by the Design/Builder or associated contractors. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 **Damage to Property of Others**.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 **Failure of Design/Builder to Repair Damage**.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 **Emergencies**.

In an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 **Disputes between Company and Design/Builder**.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of this Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 **Dispute Resolution Procedures**.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute; During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 **Design/Builder Events of Default**.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to the Team Subcontractor for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractor or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are

instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within [redacted]ays of its institution.

12.2 **Remedies of the Company upon a Design/Builder Event of Default**.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon [redacted] Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such [redacted]Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished. [redacted]

12.3 **Company Events of Default**.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of [redacted]Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of [redacted]Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 **Remedies of the Design/Builder upon a Company Event of Default**.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon Days additional written notice to the Company, terminate this Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 **Representations and Remedies**.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 **Termination or Suspension for Convenience.**

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to the Team Subcontractor and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such

period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to the Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 **Governing Law**.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 **Successors and Assigns**.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 **Written Notice**.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

and

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 **Commencement of Statutory Limitation Period and Statute of Repose Period**.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of

any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 **Modifications**.

No Modifications or Change Orders shall be valid unless in writing and signed by the Company and the Design/Builder or their respective permitted successors and assigns.

13.6 **Interpretation**.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless relating to all supplements and/or amendments to any exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 **Severability**.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 **Whole Agreement**.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

13.9 **Accounting Records**.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of years after final payment, or for such longer period as may be required by law.

13.10 **Limitation of Liability**.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 **Audit and Records.**

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until fter any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

[Signature Page to Design/Build Agreement (AC Renovation –O'Neill Heights and San Luis Rey) (Page 1 of 2)]

[Signatures Continue on Following Page]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Governmental Approvals
Exhibit G	-	Intentionally Deleted
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

None.

EXHIBIT D

EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the regulatory approvals for which the Company is responsible prior to commencement of any construction activities by the Design/Builder:

Third Party Plan Review:

1. The Company shall execute a Construction Consultant Agreement and Code Compliance Agreement to obtain a third party to review the Construction Documents for approval.

Utilities:

2. The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging Facilities Maintenance Division (FMD) utilities.

Group Approvals:

3. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

4. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Site, such approvals shall be the responsibility of the Company.

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

EXHIBIT I

SITE DESCRIPTION

That certain land ground leased by the Company serving MCB Camp Pendleton, San Diego, California, commonly referred to as:

(ii) the O'Neill Heights neighborhood and part of the Phase I Project (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-1a to the Amended and Restated Ground Lease, together with any improvements located thereon.

(iii) the San Luis Rey neighborhood and part of the Phase I Project (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-1a and Exhibit A-1b to the Amended and Restated Ground Lease, together with any improvements located thereon.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within [redacted]ays of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within th[redacted]day review time, then afte[redacted]Business Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability: Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

6. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using ISO Form CG 20 10 or its equivalent. Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

7. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a 10-Day written notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

8. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[SEE TAB #6]

EXHIBIT N-2

FORM OF SUBCONTRACTOR BONDS

EXHIBIT O

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to in this Exhibit P as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the Wage Decision attached hereto as Appendix P-1, and the Payrolls and Basic Records provision. The provisions of the Davis-Bacon Act, as implemented by Federal Acquisition Regulation (FAR) 52.222-6, applicable to this Agreement are provided below.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder to Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. **Davis-Bacon Act (Jul 2005)**

(a) *Definition*.—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall

be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

> (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
>
> (ii) The classification is utilized in the area by the construction industry.
>
> (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the: Wage and Hour Division, Employment Standards Administration,

U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (e) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

Davis Bacon General Decision Number CA080001 dated 2/12/2010 CA1

[SEE ATTACHED]

General Decision Number: CA080001 02/12/2010 CA1

Superseded General Decision Number: CA20070001

State: California

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/08/2008
1	02/15/2008
2	02/22/2008
3	02/29/2008
4	03/07/2008
5	03/28/2008
6	04/04/2008
7	04/11/2008
8	05/09/2008
9	06/20/2008
10	07/04/2008
11	07/11/2008
12	08/01/2008
13	09/12/2008
14	10/03/2008
15	11/14/2008
16	12/05/2008
17	01/02/2009
18	01/16/2009
19	02/06/2009
20	02/27/2009
21	03/06/2009
22	04/03/2009
23	04/17/2009
24	05/01/2009
25	06/19/2009
26	07/03/2009
27	07/10/2009
28	07/31/2009
29	08/14/2009
30	08/21/2009
31	08/28/2009
32	09/04/2009
33	10/09/2009
34	10/16/2009
35	10/30/2009
36	11/13/2009
37	11/20/2009
38	12/04/2009

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          39             01/01/2010
          40             01/15/2010
          41             02/12/2010

* ASBE0005-002 01/01/2010

                                  Rates          Fringes

Asbestos Workers/Insulator
(Includes the application of
all insulating materials,
protective coverings,
coatings, and finishes to all
types of mechanical systems).....$ 32.93            15.32
Fire Stop Technician
(Application of Firestopping
Materials for wall openings
and penetrations in walls,
floors, ceilings and curtain
walls)...........................$ 24.21            13.76
----------------------------------------------------------------
* ASBE0005-004 01/01/2010

                                  Rates          Fringes

Asbestos Removal
worker/hazardous material
handler (Includes
preparation, wetting,
stripping, removal,
scrapping, vacuuming, bagging
and disposing of all
insulation materials from
mechanical systems, whether
they contain asbestos or not)....$ 18.85             8.03
----------------------------------------------------------------
 BOIL0092-003 10/01/2009

                                  Rates          Fringes

BOILERMAKER......................$ 40.22            22.26
----------------------------------------------------------------
 BRCA0004-008 11/01/2009

                                  Rates          Fringes

BRICKLAYER; MARBLE SETTER........$ 31.40            13.55
----------------------------------------------------------------
 BRCA0018-004 06/01/2008

                                  Rates          Fringes

MARBLE FINISHER..................$ 25.52             9.08
TILE FINISHER....................$ 21.07             7.88
TILE LAYER.......................$ 32.05            11.99
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 BRCA0018-010 09/01/2009

                                  Rates          Fringes
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TERRAZZO FINISHER................$ 26.59            9.62
TERRAZZO WORKER/SETTER...........$ 33.63           10.46
----------------------------------------------------------------
 CARP0409-002 07/01/2008

                                   Rates          Fringes

Diver
     (1) Wet.....................$ 663.68           9.82
     (2) Standby.................$ 331.84           9.82
     (3) Tender..................$ 323.84           9.82
     (4) Assistant Tender........$ 299.84           9.82

Amounts in "Rates' column are per day
----------------------------------------------------------------
 CARP0409-008 07/01/2008

                                   Rates          Fringes

Modular Furniture Installer......$ 19.00            7.41
----------------------------------------------------------------
* CARP0547-001 07/01/2009

                                   Rates          Fringes

CARPENTER
     (1)  Bridge.................$ 37.28          10.58
     (2)  Commercial Building....$ 32.30          10.58
     (3)  Heavy & Highway........$ 37.15          10.58
     (4)  Residential Carpenter..$ 25.84          10.58
     (5)  Residential
     Insulation Installer........$ 18.00           8.16
MILLWRIGHT.......................$ 37.65          10.58
PILEDRIVERMAN....................$ 37.28          10.58
----------------------------------------------------------------
 CARP0547-002 07/01/2009

                                   Rates          Fringes

Drywall
     (1) Work on wood framed
     construction of single
     family residences,
     apartments or condominiums
     under four stories
      Drywall Installer/Lather...$ 21.00           8.58
      Drywall Stocker/Scrapper...$ 11.00           6.67
     (2) All other work
      Drywall Installer/Lather...$ 27.35           9.58
      Drywall Stocker/Scrapper...$ 11.00           6.67
----------------------------------------------------------------
 ELEC0569-001 06/01/2009

                                   Rates          Fringes

Electricians (Tunnel Work)
     Cable Splicer...............$ 41.98       3%+11.29
     Electrician.................$ 41.23       3%+11.29
Electricians: (All Other
Work, Including 4 Stories
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Residential)
Cable Splicer.....$ 37.40 3%+11.29
Electrician.....$ 36.65 3%+11.29

ELEC0569-005 12/01/2009

	Rates	Fringes
Sound & Communications		
Sound Technician	$ 26.42	$10.47
Soundman	$ 21.14	$8.74

SOUND TECHNICIAN: Terminating, operating and performing final check-out

SOUNDMAN: Wire-pulling, splicing, assembling and installing devices

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

ELEC0569-006 10/01/2009

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

	Rates	Fringes
Traffic signal, street light and underground work		
Utility Technician #1	$ 27.00	$7.53
Utility Technician #2	$ 20.00	$7.32

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

ELEC0569-008 12/01/2005

	Rates	Fringes
ELECTRICIAN (Residential, 1-3 Stories)	$ 21.00	3%+2.55

ELEC1245-001 06/01/2009

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer	$ 44.47	13.11
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment)	$ 35.52	12.07
(3) Groundman	$ 27.17	11.82
(4) Powderman	$ 39.71	12.23

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

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ELEV0018-001 01/01/2010

	Rates	Fringes
ELEVATOR MECHANIC	$ 45.33	20.035

FOOTNOTE:
PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

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* ENGI0012-003 07/01/2009

	Rates	Fringes
OPERATOR: Power Equipment (Undefined) (All Other Work)		
GROUP 1	$ 36.83	17.22
GROUP 2	$ 37.61	17.22
GROUP 3	$ 37.90	17.22
GROUP 4	$ 39.39	17.22
GROUP 5	$ 40.49	17.22

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     GROUP  6....................$ 39.61            17.22
     GROUP  7....................$ 40.71            17.22
     GROUP  8....................$ 39.72            17.22
     GROUP  9....................$ 40.82            17.22
     GROUP 10....................$ 39.84            17.22
     GROUP 11....................$ 40.94            17.22
     GROUP 12....................$ 40.01            17.22
     GROUP 13....................$ 40.11            17.22
     GROUP 14....................$ 40.14            17.22
     GROUP 15....................$ 40.22            17.22
     GROUP 16....................$ 40.34            17.22
     GROUP 17....................$ 40.51            17.22
     GROUP 18....................$ 40.61            17.22
     GROUP 19....................$ 40.72            17.22
     GROUP 20....................$ 40.84            17.22
     GROUP 21....................$ 41.01            17.22
     GROUP 22....................$ 41.11            17.22
     GROUP 23....................$ 41.22            17.22
     GROUP 24....................$ 41.34            17.22
     GROUP 25....................$ 41.51            17.22
OPERATOR:   Power Equipment
(Undefined) (Cranes,
Piledriving & Hoisting)
     GROUP  1....................$ 38.18            17.22
     GROUP  2....................$ 38.96            17.22
     GROUP  3....................$ 39.25            17.22
     GROUP  4....................$ 39.39            17.22
     GROUP  5....................$ 39.61            17.22
     GROUP  6....................$ 39.72            17.22
     GROUP  7....................$ 39.84            17.22
     GROUP  8....................$ 40.01            17.22
     GROUP  9....................$ 40.18            17.22
     GROUP 10....................$ 41.18            17.22
     GROUP 11....................$ 42.18            17.22
     GROUP 12....................$ 43.18            17.22
     GROUP 13....................$ 44.18            17.22
OPERATOR:   Power Equipment
(Undefined) (Tunnel Work)
     GROUP  1....................$ 38.68            17.22
     GROUP  2....................$ 39.46            17.22
     GROUP  3....................$ 39.75            17.22
     GROUP  4....................$ 39.89            17.22
     GROUP  5....................$ 40.11            17.22
     GROUP  6....................$ 40.22            17.22
     GROUP  7....................$ 40.34            17.22

PREMIUM PAY:
  $3.75 per hour shall be paid on all Power Equipment Operator
  work on the followng Military Bases: China Lake Naval
  Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base,
  Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics
  Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp
  Pendleton

  Workers required to suit up and work in a hazardous material
  environment: $2.00 per hour additional.  Combination mixer
  and compressor operator on gunite work shall be classified
  as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS
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POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Horizontal Directional Drilling Machine; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system

(below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 7: Welder - General

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25

yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator,

stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the NW ï¿½ of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo

County Boundary at that point which is the NE corner of the W ï¿½ of the N ï¿½ of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE ï¿½ of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE ï¿½ of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point whch is the SW corner of Section 34.T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE ï¿½ of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County

Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the W ï¿½ of the NW ï¿½ of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE ï¿½ of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the W ï¿½ of the NW ï¿½ of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW ï¿½ of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

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* ENGI0012-004 08/01/2009

	Rates	Fringes
OPERATOR: Power Equipment (Undefined) (DREDGING)		
(1) Leverman	$ 44.83	17.22
(2) Dredge dozer	$ 40.36	17.22
(3) Deckmate	$ 40.25	17.22
(4) Winch operator (stern winch on dredge)	$ 39.70	17.22
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand	$ 39.16	17.22
(6) Barge Mate	$ 39.77	17.22

IRON0002-004 07/01/2009

	Rates	Fringes
Ironworkers:		
Fence Erector	$ 26.58	15.24
Ornamental, Reinforcing		

and Structural.....$ 33.00 23.71

PREMIUM PAY:

$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

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* LABO0089-001 07/01/2009

	Rates	Fringes
LABORER - UNDEFINED (BUILDING and all other Residential Construction)		
Group 1	$ 25.02	13.50
Group 2	$ 25.90	13.50
Group 3	$ 26.61	13.50
Group 4	$ 27.41	13.50
Group 5	$ 28.09	13.50
LABORER - UNDEFINED (RESIDENTIAL CONSTRUCTION - See definition below)		
(1) Laborer	$ 22.87	10.83
(2) Cleanup, Landscaping, Fencing (chain link or wood)	$ 21.58	10.83

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas, water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and

air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filling of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demoliton); Guinea chaser; Headboard man-asphlt; Laborer,
packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riiprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including drilling of same); Hydro seeder and similar type; Impact wrench, mult-plate; Kettlemen, potmen and mean applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air blasting, come-along, and similar mechanicl tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and inclduing rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scaarifier; Steel header board man and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, apshalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of oepration, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid, gas, air or other

product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all pwder and explosives of whatever type, regardless of method used for such loading and placing; Driller-all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

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* LABO0089-002 11/01/2008

	Rates	Fringes
LABORER - UNDEFINED (MASON TENDER)	$ 25.86	12.13

LABO0089-004 07/01/2009

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
GROUP 1	$ 26.14	13.50
GROUP 2	$ 26.60	13.50
GROUP 3	$ 27.01	13.50
GROUP 4	$ 27.85	13.50
GROUP 5	$ 30.72	13.50

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber,Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile

cutter; driller/Jackhammer, with drill steel 2 1/'2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-klold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket jlints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer - Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter,Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work. High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting,m makeing of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prfefabricated Manhole Installer, Sandblast Nozzleman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without

regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

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* LABO0300-008 08/05/2009

	Rates	Fringes
LABORER - UNDEFINED		
PLASTER CLEAN-UP LABORER....	$ 26.65	14.70
PLASTER TENDER.....	$ 29.20	14.70

Work at Military Bases - $3.00 additional per hour: Coronado Naval Amphibious Base, Fort Irwin, George AFB, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

LABO0882-002 01/01/2009

	Rates	Fringes
Asbestos Removal Laborer.....	$ 26.15	13.25

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2009

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	$ 27.05	10.40
(2) Vehicle Operator/Hauler.	$ 27.22	10.40
(3) Horizontal Directional Drill Operator.....	$ 29.07	10.40
(4) Electronic Tracking Locator.....	$ 31.07	10.40
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	$ 28.50	13.56
GROUP 2.....	$ 29.80	13.56
GROUP 3.....	$ 31.81	13.56
GROUP 4.....	$ 33.55	13.56

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment

repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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PAIN0036-001 01/01/2010

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Repaint	$ 26.05	9.41
(2) All Other Work	$ 29.32	9.41

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

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* PAIN0036-010 01/02/2010

	Rates	Fringes
DRYWALL FINISHER/TAPER		
(1) Building & Heavy Construction	$ 29.19	12.19
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories)	$ 18.00	7.97

PAIN0036-012 01/01/2010

	Rates	Fringes

GLAZIER.....$ 36.55 14.87

PAIN0036-019 02/01/2009

	Rates	Fringes
SOFT FLOOR LAYER.....	$ 26.77	11.75

PLAS0200-005 08/05/2009

	Rates	Fringes
PLASTERER.....	$ 35.41	9.88

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS BASE, IMPERIAL BEACH NAVAL AIR STATION: $3.00 additional per hour.

PLAS0500-001 06/26/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER		
GROUP 1.....	$ 26.42	8.70
GROUP 2.....	$ 28.07	8.70
GROUP 3.....	$ 30.75	8.10

CEMENT MASONS - work inside the building line, meeting the following criteria:

GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 07/01/2009

	Rates	Fringes
PLUMBER, PIPEFITTER, STEAMFITTER		
(1) Work on strip malls, light commercial, tenant improvement and remodel work.....	$ 28.84	14.47
(2) Work on new additions and remodeling of commercial buildings, bars, restaurants, and stores not to exceed 5,000 sq. ft. of floor space.....	$ 35.97	15.86
(3) All other work.....	$ 37.10	16.84
(4) Camp Pendleton.....	$ 41.60	16.84

PLUM0016-011 07/01/2009

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                                    Rates          Fringes

PLUMBER/PIPEFITTER
     Residential................$ 29.97            12.91
-----------------------------------------------------------------
 PLUM0345-001 07/01/2009

                                    Rates          Fringes

PLUMBER
     Landscape/Irrigation Fitter.$ 26.70            13.84
     Sewer & Storm Drain Work....$ 25.18            15.67
-----------------------------------------------------------------
 ROOF0045-001 08/01/2009

                                    Rates          Fringes

ROOFER.........................$ 23.63             6.50
-----------------------------------------------------------------
 SFCA0669-001 01/01/2009

                                    Rates          Fringes

SPRINKLER FITTER................$ 33.50            15.30
-----------------------------------------------------------------
 SHEE0206-001 01/01/2010

                                    Rates          Fringes

SHEET METAL WORKER
     Camp Pendleton.............$ 36.05            15.81
     Except Camp Pendleton......$ 34.05            15.81
     Sheet Metal Technician.....$ 23.99             4.71

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and
multi-family, where each unit is heated and/or cooled by a
separate system  b. New single family residential buildings
including tracts.  c. New multi-family residential buildings,
not exceeding five stories of living space in height, provided
each unit is heated or cooled by a separate system. Hotels and
motels are excluded.  d. LIGHT COMMERCIAL WORK: Any sheet
metal, heating and air conditioning work performed on a project
where the total construction cost, excluding land, is under
$1,000,000  e. TENANT IMPROVEMENT WORK: Any work necessary to
finish interior spaces to conform to the occupants of
commercial buildings, after completion of the building shell

-----------------------------------------------------------------
 TEAM0036-001 07/01/2009

                                    Rates          Fringes

Truck drivers:
     GROUP 1....................$ 14.90            18.30
     GROUP 2....................$ 24.49            18.30
     GROUP 3....................$ 24.69            18.30
     GROUP 4....................$ 24.89            18.30
     GROUP 5....................$ 25.09            18.30
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    GROUP 6.....................$ 25.59            18.30
    GROUP 7.....................$ 27.09            18.30
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FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Fuel Man, Swamper

GROUP 2: 2-axle Dump Truck, 2-axle Flat Bed,Concrete Pumping Truck, Industrial Lift Truck, Motorized Traffic Control, Pickup Truck on Jobsite

GROUP 3: 2-axle Water Truck, 3-axle Dump Truck, 3-axle Flat Bed, Erosion Control Nozzleman, Dump Crete Truck under 6.5 yd, Forklift 15,000 lbs and over, Prell Truck, Pipeline Work Truck Driver, Road Oil Spreader, Cement Distributor or Slurry Driver, Bootman, Ross Carrier

GROUP 4: Off-road Dump Truck under 35 tons 4-axles but less than 7-axles, Low-Bed Truck & Trailer, Transit Mix Trucks under 8 yd, 3-axle Water Truck, Erosion Control Driver, Grout Mixer Truck, Dump Crete 6.5yd and over, Dumpster Trucks, DW 10, DW 20 and over, Fuel Truck and Dynamite, Truck Greaser, Truck Mounted Mobile Sweeper 2-axle Winch Truck

GROUP 5: Off-road Dump Truck 35 tons and over, 7-axles or more, Transit Mix Trucks 8 yd and over, A-Frame Truck, Swedish Cranes

GROUP 6: Off-Road Special Equipment (including but not limited to Water Pull Tankers, Athey Wagons, DJB, B70 Wuclids or like Equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

EXHIBIT G-15

[redacted]

[redacted]

#7065031

[redacted]

#7065031

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

EXHIBIT G-16

KANSAS CITY DEMO DESIGN/BUILD AGREEMENT

[See Attached]

EXECUTION COPY

DESIGN/BUILD AGREEMENT

(MARFORRES Kansas City – Demolition)

By and Between

Camp Pendleton & Quantico Housing, LLC

and

s Design/Builder

Dated as of August 28, 2013

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DESIGN/BUILD AGREEMENT
(MARFORRES Kansas City – Demolition)

This Design/Build Agreement (MARFORRES Kansas City – Demolition) (this "**Agreement**") dated as of August 28, 2013 and effective for all purposes as of August 28, 2013 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**ACM**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.2 "**Additional Design Services Costs**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.3 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.4 "**Agreement**" means this Design/Build Agreement (MARFORRES Kansas City – Demolition) and all amendments and/or modifications hereto executed by the Parties.

1.5 "**Alternate**" shall have the meaning set forth in Section 9.3.2 hereof.

1.6 "**Amended and Restated Ground Lease**" shall have the meaning set forth in the Operating Agreement.

1.7 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.8 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.9 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.10 "**CCIP**" shall have the meaning set forth in Exhibit D hereof.

1.11 "**Certificate of Substantial Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.12 "**Certificate of Final Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.13 "**Change Directive**" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.14 "**Change Order**" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.15 "**Change Proposal**" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.16 "**Claims**" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.17 "**Company**" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.18 "**Company Event of Default**" shall have the meaning set forth in Section 12.3 hereof.

1.19 "**Company Indemnified Parties**" means the Company, its members, agents, partners and employees.

1.20 "**Construction Agreement**" means that certain Construction Agreement (MARFORRES Kansas City – Demolition) between the Contractor and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.22 "**Construction Documents**" means the plans and specifications prepared by a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Construction Documents must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.23 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.24 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project.

1.25 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.26 "**Contract Documents**" means this Agreement and those documents set forth on Exhibit C all of which form the entire integrated agreement between the Company and the Design/Builder.

1.27 "**Contractor**" means

1.28 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Final Completion of the Work.

1.29 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.30 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D.

1.31 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.32 "**Day**" **or** "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable.

"**Business Day**" or "**Business Days**" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of Missouri are open for business.

1.33 "**Design/Builder**" means

1.34 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.35 "**Design/Builder Indemnified Parties**" means the Design/Builder and the Contractor, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.36 "**Design/Builder Initiated Change Orders**" means Design/Builder initiated Change Orders other than any Force Majeure Change Orders.

1.37 "**Design Group**" means all engineers having a contract with the Design/Builder to furnish architectural or engineering services for the Project. The initial members of the Design Group are listed on Exhibit M attached hereto.

1.38 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.39 "**Design Work**" means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.40 "**DoN**" means the United States of America, Department of the Navy.

1.41 "**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement.

1.42 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.43 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.44 "**Fee**" means

1.45 "**Final Completion" or "Finally Complete**" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.46 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, quarantine, civil disturbance, war, terrorism, acts of a public enemy (such public enemy defined as a nation at war with the United States), freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractor), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder, Subcontractors and Team Subcontractor.

1.48 "**Company Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.49 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.50

1.51 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.52 "**Kansas City Fee Site**" shall have the meaning set forth on Exhibit I attached hereto.

1.53 "**Kansas City Lease Site**" shall have the meaning set forth on Exhibit I attached hereto.

1.54 "**LBP**" shall have the meaning set forth in the Amended and Restated Ground Lease.

1.55 "**Managing Member**" means which is the managing member of the Company.

1.56 "**Mobilization Plan"** shall have the meaning set forth in Section 2.11 hereof.

1.57 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.58 "**Notice to Begin Design**" means the notice given by the Company to the Design/Builder stating that the Design/Builder is authorized to begin the design of the Project.

1.59 "**Operating Agreement**" means that certain Fourth Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of January 15, 2013, as amended and/or restated from time to time.

1.60 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.61 "**Overhead**" means

1.62 "**Party**" **or** "**Parties**" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.63 "**Payment and Performance Bonds**" means the payment bond and performance bonds issued by a Surety, in the most current form of American Institute of Architects, AIA Document A312 (Performance Bond and Payment Bond), covering the faithful performance and completion of the Construction Work at the Site, including payment for all materials and labor furnished or supplied in connection with such Construction Work, by the Contractor, as required under the Construction Agreement.

1.64 "**Product Data**" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.65 "**Project**" means the facilities located on the Site, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.66 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.67 "**Resident Officer in Charge of Construction**" **or** "**ROICC**" shall have the meaning set forth in Section 2.16.1 hereof.

1.68 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.69 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

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1.71 "**Schedule**" means the schedule attached hereto as Exhibit H, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work at the Site. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.72 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.73 "**Scope of Work Submittal Documents**" means the drawings, specifications and other documents prepared for the Design/Builder (as more particularly set forth on Exhibit C hereto) for the Company's review and approval prior to the preparation of the Construction Documents. The Scope of Work Submittal Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project, and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction

Documents in accordance with the requirements of the Contract Documents, including architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.74 "**Self-Performed Work**" shall have the meaning set forth in Section 8.3 hereof.

1.75 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.76 "**Shop Drawings**" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.77 "**Site**" means the property identified on Exhibit I attached hereto, and any other real property on which the Work will be performed.

1.78 "**Subcontract**" means an agreement between the Contractor or the Design/Builder and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.79 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Design/Builder or the Contractor for the provision of labor, materials or other services required to be performed by the Design/Builder under this Agreement.

1.80 "**Substantial Completion**" **or** "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.81 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.82 "**Team Subcontract**" means an agreement between the Contractor and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.83 "**Team Subcontractor**" means the Contractor.

1.84 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.85 "**Work**" **or** "**Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto. The terms Work or Scope of Work include Design Work and Construction Work.

ARTICLE 2
SCOPE OF WORK

2.1 **Performance of Work**.

The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing the Team Subcontractor and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A, and the Schedule set forth in Exhibit H, as adjusted for extensions of time as permitted in this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design/Builder shall be responsible for achieving Substantial Completion of the Project or portions thereof by the Scheduled Date(s) of Substantial Completion, as the same may be extended from time to time pursuant to the provisions of this Agreement, and shall achieve Final Completion within a reasonable time thereafter.

2.2 **Professional Standard**.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractor and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractor or Subcontractors, except as otherwise specifically provided herein.

2.3 **Use of Design Materials**.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement. The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with the Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and

shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 **Local Conditions; Environmental Site Conditions**.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that (i) actually known by the Design/Builder as of the date of this Agreement, or (ii) which should have Reasonably Been Known by the Design/Builder based on the Due Diligence completed as of the date of this Agreement, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than [redacted] Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the [redacted]chedule pursuant to the Change Order provisions of this Agreement. The term "**Due Diligence**" shall mean those investigations or reports contracted for or performed by the Design/Builder and agreed to by the Company, being more particularly set forth on Exhibit C attached hereto. The term "**Reasonably Been Known**" shall mean that which another similarly situated design/builder for a similar project would have reasonably been expected to know based on commercially accepted practices in the industry.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractor or Subcontractors or not expressly identified and included in the Scope of Work, including, but not limited to, LBP and ACM), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so. The Design/Builder includes the removal of all known existing above and below grade structures in the Scope of Work including the removal of any known Hazardous Materials, which were identified in the Environmental Documents or known as of the date of this Agreement by the Design/Builder or Affiliates in the above grade structures.

2.5 **Scope of Work Submittal Documents and Construction Documents**.

2.5.1 General. The Company has given the Design/Builder the Notice to Begin Design, and the Design/Builder has instructed its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. After such approval, the Design/Builder shall cause its Subcontractors to prepare the Construction Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction. The Design/Builder's submittal and the Company's review of the Scope of Work Submittal Documents and the Construction Documents shall be conducted in accordance with the durations and procedures set forth in Exhibit H and Exhibit J, and in accordance with the Schedule dates set forth in Exhibit H. Such review shall not relieve the Design/Builder from its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Company of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and approved by the Company.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H.

2.6 **Legal Requirements**.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design/Builder shall prepare and file all documents required to obtain the necessary

approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure those permits and governmental fees, licenses and inspections required by the Contract Documents to be secured by the Design/Builder (to the extent the Contract Documents do not require the Company to obtain such approvals). In the event that any changes in Applicable Laws following the Effective Date cause any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order adjusting Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Company for review. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the Contract Documents will be waived by the applicable entities, If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. Notwithstanding the foregoing, the Parties agree that the Design/Builder shall only be required to comply with the Davis-Bacon Wage requirements (and Davis-Bacon Wage Determination(s)) set forth on Exhibit P notwithstanding any change in such law or wage determination(s).

2.7 **Services and Facilities**.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractor, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental

agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 **Warranties**.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be new and of quality as good or better than required by the Contract Documents unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities in lieu of what is set forth in the Construction Documents, subject to Exhibit A, if in the reasonable opinion of the engineer for the Project, the utilities are in satisfactory condition. If the Design/Builder elects to reuse existing utilities pursuant to the foregoing, and Exhibit A contemplates Design/Builder's construction of new utilities, a deductive Change Order shall be issued for the cost of the utilities work no longer required. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the

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

2.8.2 Intentionally Deleted.

2.8.3 Intentionally Deleted.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in accordance with the Schedule, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion such building or group of buildings. If within after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period o hall be extended with respect to portions of the Work first performed after Substantial Completion of such building to fter Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. The costs to correct Work which is not in accordance with the requirements of the Contract Documents shall be payable as Cost of the Work if incurred prior to Final Completion of the Work. If such costs are incurred after Final Completion of the Work have been distributed to the Company, the costs in connection with such warranty work shall be paid Notwithstanding the foregoing, if the correction work referenced in this Section 2.8.4 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance, If the parties cannot agree, such matter shall be subject to dispute resolution as provided under Article 11 of this Agreement. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. Notwithstanding the foregoing, if the removal work referenced in this Section 2.8.10 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work, whether completed or partially completed,

of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule nd shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 **Access by Company or United States Member**.

The Design/Builder shall afford the Company, the United States Member and their respective authorized designees access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 **Use of Site**.

The Design/Builder shall prepare a mobilization plan, prior to the start of the Construction Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely basis, the Design/Builder shall be entitled to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement.

2.12 **Patents, Trademarks, Copyrights**.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or the Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 **Rubbish; Debris; Cleanup**.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If the Design/Builder fails to clean up as provided in the Contract Documents after Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 **Permits, Fees and Notices**.

Unless otherwise provided in the Contract Documents or unless designated a Company Approval in Exhibit F hereto, and subject to the provisions of Section 2.6 hereof, To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 **Shop Drawings, Product Data and Samples**.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to

record changes and selections made during the Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MARFORRES Kansas City (to the attention of Base Commander), Headquarters Marine Corps (to the attention of Military Housing Office ("**MHO**")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MARFORRES Kansas City, and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 **Tests and Inspections**.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company and the

Resident Office in Charge of Construction ("**ROICC**") timely notice of when and where tests and inspections are to be made so that the Company and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents, n accordance with the Change Order provisions of this Agreement.

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 **Execution, Correlation and Intent**.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become generally familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in

dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 **Labor and Materials; Liens**.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractor, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit the Team Subcontractor, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens within Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 **Cutting and Patching**.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 **Uncovering of Construction Work**.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule the costs of such uncovering and replacement shall be a Cost of the Work, except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule nd the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 **Information and Services Required of the Company**.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with the Team Subcontractor, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Company Approvals. The Company shall be responsible for obtaining the Company Approvals set forth on Exhibit F hereto. Any delay in obtaining the Company Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall also be responsible for paying for all building permits, site permits, licenses, governmental fees and inspections other than the cost of trade permits, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon Days prior written notice to the Company, stop the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 **Activities on the Site by Company or Separate Contractors**.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that

the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and the Team Subcontractor and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule nd shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense,

including attorneys' fees, as well as any resulting judgment or settlement, as Cost of the Work, which shall be without change to the Schedule

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 **Assignment of Separate Contracts**.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's and/or Contractor's agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of the Design/Builder,

3.4 **Company's Right to Stop the Work**.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 **Company's Right to Carry out the Work**.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after such Day period give the Design/Builder a second written notice to correct such deficiencies within such Day period. If the Design/Builder within such ay period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 **Progress and Completion**.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule attached hereto as Exhibit H.

4.2 **Schedule Obligations**.

4.2.1 Contract Schedule. The construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define the construction activities, their sequences and elapsed completion time from the date of the Construction Notice to Proceed. The Company shall issue a Construction Notice to Proceed to the Design/Builder directing the Design/Builder to commence construction of the Work. The Schedule shall set forth separate Substantial Completion Dates for each group of buildings. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 **Intentionally Deleted**.

4.4 **Intentionally Deleted**.

4.5 **Intentionally Deleted**.

4.6 **Delays**.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available access to housing units in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, approvals and authorizations from federal, state, or local governments or quasi-governmental agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed building conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, unforeseen existing code violations, limited access to units, impairing Design/Builder's ability to perform the Work.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by the Design/Builder and not required to be removed by the Design/Builder pursuant to Section 2.4.2 of this Agreement.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension

of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination.

4.8 **No Damages on Account of Delay**.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 **Schedule of Values**.

The Design/Builder has submitted to the Company, and the Parties (including the United States Member) have agreed upon the schedule of values shown in Exhibit E which sets forth the various portions of the Work, his schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 **Applications for Payment**.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 **Retainage**.

5.5.1 With respect to the Design Work,

5.5.2 With respect to Construction Work, Retainage on the Construction Work shall be withheld until such Construction Work is complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable directly to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Retainage withheld on account of the Construction Work shall be released upon Substantial Completion of such Construction Work, less of the value of any uncompleted Construction Work or Punch list items relating to such buildings. Retainage withheld on account of uncompleted Construction Work or Punch list items shall be released upon completion of such uncompleted Construction Work or Punch list items. All remaining Retainage shall be fully released within Days of Final Completion of the entire Construction Work.

5.6 **Early Release of Subcontractor Retainage**.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 **Payment for On-Site and Off-Site Stored Materials**.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall be similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 **Title to Construction Work**.

The Design/Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to the Company no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from the Company shall, to the best of the Design/Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder, Team Subcontractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Construction Work.

5.9 **Withholding of Payment**.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 **Failure of Payment; Interest**.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule all be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 **Substantial Completion**.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building shall state

the date of Substantial Completion and shall be executed by the Company and the Design/Builder. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 **Partial Occupancy or Use**.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 **Final Completion and Final Payment**.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If the Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 **Allowances**.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses; and

5.15 **Superintendent**.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 **Documents and Samples at the Site**.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 **Contingency**.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project, which shall be paid as set forth in the Operating Agreement. Notwithstanding the foregoing, increase in the line item amount for General Conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 **Changes**.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 **Change Directives**.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Company of the Design/Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in he Schedule. If the Design/Builder receives a written communication signed by the Company, which the Design/Builder believes is a Change Directive, but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in t Schedule, the method and adjustment shall be determined as provided in Section 6.5 below. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5

6.3 **Change Proposals**.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 **Claims**.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 **Payment on Account of Change Orders and/or Excusable Delays**.

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6.5.1.2

6.5.1.3

6.5.2 Design Work. For Design Work,

6.5.2.1

6.5.2.2

6.5.2.3

6.5.3 Decreased Scope. With respect to Change Orders which decrease the Scope of Work described on Exhibit A,

6.6 **Changes on Account of Delay in Commencement of Work**.

In the event the commencement of the Project is delayed beyond July 15, 2013 for any reason other than the fault of the Design/Builder,

6.7

6.8 **Time Extensions on Account of Change Orders**.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 **Care, Custody and Control by Design/Builder During Construction**.

The Design/Builder shall be responsible for care, custody and control of the Project, or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders related to the Project from issuance of the Construction Notice to Proceed until Final Completion. The Design/Builder shall not be responsible for damages, care, custody and control of the existing housing units unless damage is the direct result from the Design/Builder or associated contractors.

7.2 **Substantial Completion; Partial Occupancy or Use**.

At Substantial Completion of the Work, or portion thereof, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Project or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Site or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Project or portion thereof which may thereafter occur. In the event that loss or damage to the Project or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
SUBCONTRACTORS

8.1 **Team Subcontractors**.

The Design/Builder shall enter into one or more Team Subcontracts with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a

Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

8.2 **Subcontracts**.

8.2.1 Incorporation of Contract Documents. The Design/Builder shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 **Self-Performed Work**. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 **Subcontractor Bids**. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in excess of The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 **Insurance to be Provided by the Design/Builder**.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 **Insurance to be Provided by the Company**.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 **Payment and Performance Bonds**.

9.3.1 The Design/Builder shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds. The Design/Builder shall deliver the Payment and Performance Bonds prior to, and as a condition precedent to, commencement of the Construction Work at the Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder and the Company as co-obligees, Prior to the commencement of the Work on any alternate under the Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds, either through Subcontractor payment and performance bonds or Contractor furnished payment and performance bonds, so that the combined value of the Subcontractor and Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement. All payment and performance bonds issued pursuant to this Section (including, without limitation, subcontractor payment and performance bonds) shall name the Design/Builder and the Company as co-obligees, and shall be in the forms set forth on Exhibit N-1 (with respect to Contractor-furnished payment and performance bonds) or Exhibit N-2 (with respect to Subcontractor-furnished payment and performance bonds). All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.4 **Indemnification**.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 **Company Agreement**.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor for obligations of the Design/Builder unless the Company is expressly authorized to do so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 **Safety Precautions and Programs**.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 **Safety of Persons and Property**.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4).

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger anyone's safety.

10.3 **Security**.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and

measures as may be reasonably necessary to secure the Site during the actual hours Work is being performed by the Design/Builder.

10.4 **Damage to Property at the Site**.

The Design/Builder shall be responsible for damage to property only to the extent related to direct damage caused by the Design/Builder or associated contractors. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 **Damage to Property of Others**.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 **Failure of Design/Builder to Repair Damage**.

If the Design/Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then the Company, afte Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 **Emergencies**.

In an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 **Disputes between Company and Design/Builder**.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of this Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth

herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 **Dispute Resolution Procedures**.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving

Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 **Design/Builder Events of Default**.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to the Team Subcontractor for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractor or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within Days of its institution.

12.2 **Remedies of the Company upon a Design/Builder Event of Default**.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 **Company Events of Default**.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for

relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 **Remedies of the Design/Builder upon a Company Event of Default**.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon Days additional written notice to the Company, terminate this Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 **Representations and Remedies**.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 **Termination or Suspension for Convenience.**

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to the Team Subcontractor and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible or (2) that an equitable adjustment to the Schedule is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may

have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 **Governing Law**.

This Agreement shall be governed by the laws of the State of Missouri, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 **Successors and Assigns**.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 **Written Notice**.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

and

Naval Facilities Engineering Command
Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 **Commencement of Statutory Limitation Period and Statute of Repose Period**.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged

cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 **Modifications**.

No Modifications or Change Orders shall be valid unless in writing and signed by the Company and the Design/Builder or their respective permitted successors and assigns.

13.6 **Interpretation**.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless relating to all supplements and/or amendments to any exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 **Severability**.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 **Whole Agreement**.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

13.9 **Accounting Records**.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of [redacted]ears after final payment, or for such longer period as may be required by law.

13.10 **Limitation of Liability**.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 **Audit and Records.**

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated until after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

DESIGN/BUILDER:

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Company Approvals
Exhibit G	-	Intentionally Deleted
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination

EXHIBIT B

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

1. United States Marine Corps Decision Memorandum Public – Private Venture Partnership (PPV) For Family Housing at Marine Corps Mobilization Command (MOBCOM), Kansas City, Missouri, dated 04/14/04.

2. Environmental Baseline Survey Public/Private Venture Housing Privatization Marine Corps Support Activity Kansas City Belton, Missouri, prepared by .

3. Draft-Final Phase I, Environmental Site Assessment, Marine Corps Mobilization Command Kansas City Military Family Housing Belton, Missouri prepared by .

4. Report of Geotechnical Exploration Richards Gebaur Airport Housing, Belton Missouri prepared by

5. Lead-Based Paint Operations & Maintenance Program MOBCOM Kansas City Military Family Housing Kansas City, Missouri, dated August 2005, Prepared for:

6. Operations & Maintenance Assessment Report MOBCOM – Kansas City Apex Job No: 3600629.001 Prepared for: Camp Pendleton & Quantico Housing, LLC, April 5, 2012

7. Asbestos Operations & Maintenance Program MOBCOM – Kansas City Military Housing, Kansas City, Missouri dated September 2005, Prepared for:

8. General Wage Decision number MO 130066 dated 01/04/2013 (MO66), Modification 0

EXHIBIT D

EXHIBIT E

EXHIBIT F

COMPANY APPROVALS

The following constitute the regulatory approvals for which the Company is responsible prior to commencement of any construction activities by the Design/Builder:

Third Party Reviewer:

1. None.

Utilities:

2. The Company is to provide all utility easements and services required to execute this Project, including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging Facilities Maintenance Division (FMD) utilities.

Group Approvals:

3. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

4. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right to construct the development on the Site, such approvals shall be the responsibility of the Company.

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

EXHIBIT I

SITE DESCRIPTION

1. That certain land ground leased by the Company serving MARFORRES Kansas City, Missouri and part of the Kansas City Project (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-6 to the Amended and Restated Ground Lease, together with any improvements located thereon (the "**Kansas City Lease Site**").

2. That certain land owned in fee simple by the Company serving MARFORRES Kansas City, Missouri and part of the Kansas City Divestiture Property and the Kansas City Early Termination Property (as such terms is defined in the Operating Agreement), as more particularly identified and described in Exhibit A-5 to the Operating Agreement, together with any improvements located thereon (the "**Kansas City Fee Site**").

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within Days of requested review for Design Materials and Design Work. The Company acknowledges that the design Subcontractor and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within th ay review time, then after ays written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Design Subcontractor will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of Insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability: Coverage to comply with the laws of Missouri and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

6. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using ISO Form CG 20 10 or its equivalent. Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

7. The Design/Builder shall file Certificates of Insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a 10-Day written notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

8. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M

DESIGN GROUP MEMBERS

EXHIBIT N-1

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[See Attached]

EXHIBIT O

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to in this Exhibit P as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the Wage Decision attached hereto as Appendix P-1, and the Payrolls and Basic Records provision. The provisions of the Davis-Bacon Act, as implemented by Federal Acquisition Regulation (FAR) 52.222-6, applicable to this Agreement are provided below.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder to Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. **Davis-Bacon Act (Jul 2005)**

(a) *Definition*.—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall

be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

> (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
>
> (ii) The classification is utilized in the area by the construction industry.
>
> (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the: Wage and Hour Division, Employment Standards Administration,

U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreement Manager and Labor Advisor.

8. Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor and subcontractors during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (e) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor and subcontractors shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall prepare and retain and subcontractors submit for each week in which any contract work is performed a copy of all payrolls to the Contractor no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify-

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Prime Contractor, the Managing Member of the partnership, and the Naval Facilities Engineering Command Business Agreement Manager or Labor Advisor. The Contractor or subcontractor shall permit Prime Contractor, the Managing Member or representatives of the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Prime Contractor or Managing Member may, after written notice to the Contractor or subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

General Wage Decision number MO 130066 dated 01/04/2013 (MO66), Modification 0

[SEE ATTACHED]

>

General Decision Number: MO130066 01/04/2013 MO66

Superseded General Decision Number: MO20120066

State: Missouri

Construction Type: Residential

Counties: Bates, Caldwell, Cass, Clay, Clinton, Lafayette, Platte and Ray Counties in Missouri.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/04/2013

* BRMO0015-026 04/01/2012

BATES, CASS, CLAY, LAFAYETTE, PLATTE, AND RAY COUNTIES

	Rates	Fringes
BRICKLAYER	$ 33.40	16.10

---

* BRMO0015-030 05/01/2012

CALDWELL AND CLINTON COUNTIES

	Rates	Fringes
BRICKLAYER	$ 31.69	14.96

---

* BRMO0015-035 04/01/2012

BATES COUNTY

	Rates	Fringes
BRICKLAYER	$ 27.74	15.08

CARP0005-001 04/01/2010

BATES & CALDWELL COUNTIES

	Rates	Fringes
CARPENTER	$ 22.09	12.00

CARP0005-005 04/01/2010

CASS, CLAY, PLATTE & RAY COUNTIES

	Rates	Fringes

CARPENTER.....$ 26.22 12.00

CARP0005-009 04/01/2010

LAFAYETTE COUNTY

	Rates	Fringes
CARPENTER	$ 23.72	12.00

CARP0110-009 05/01/2011

CLINTON COUNTY

	Rates	Fringes
CARPENTER	$ 29.95	13.05

ELEC0124-008 09/01/2011

BATES, CASS, CLAY, LAFAYETTE, PLATTE & RAY COUNTIES

	Rates	Fringes
ELECTRICIAN	$ 17.00	9.05

ENGI0101-034 04/01/2011

CASS, CLAY, CLINTON, LAFAYETTE, PLATTE & RAY COUNTIES

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Backhoe/Excavator	$ 34.89	13.71
Roller	$ 34.89	13.71

ENGI0101-035 04/01/2011

BATES & CALDWELL COUNTIES

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Backhoe/Excavator	$ 32.89	13.71
Roller	$ 32.89	13.71

LABO0264-007 04/01/2012

CASS, CLAY, LAFAYETTE, PLATTE & RAY COUNTIES

	Rates	Fringes
LABORER		
Brick Mason Tender	$ 15.45	6.80

LABO0579-007 05/01/2012

CALDWELL & CLINTON COUNTIES

	Rates	Fringes

LABORER
Brick Mason Tender.....$ 23.81 11.35

LABO0663-015 04/01/2012

BATES COUNTY

	Rates	Fringes
LABORER		
Brick Mason Tender.....	$ 21.18	10.70

PAIN0003-021 04/01/2011

	Rates	Fringes
PAINTER		
Brush and Roller.....	$ 20.50	9.57

PLUM0008-007 06/01/2012

CASS, CLAY & PLATTE COUNTIES

	Rates	Fringes
PLUMBER.....	$ 37.45	20.41

PLUM0008-016 06/01/2012

BATES, LAFAYETTE & RAY COUNTIES

	Rates	Fringes
PLUMBER.....	$ 35.01	20.41

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* PLUM0045-007 09/01/2012

CALDWELL & CLINTON COUNTIES

	Rates	Fringes
PLUMBER.....	$ 33.10	18.65

ROOF0020-005 06/01/2011

CALDWELL & CLINTON COUNTIES

	Rates	Fringes
ROOFER.....	$ 27.20	12.16

ROOF0020-013 06/01/2011

BATES, CASS, CLAY, LAFAYETTE, PLATTE & RAY COUNTIES

	Rates	Fringes
ROOFER.....	$ 32.25	13.66

SFMO0314-001 07/01/2012

CASS, CLAY, LAFAYETTE, PLATTE & RAY COUNTIES

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	$ 34.45	17.60

SFMO0669-006 04/01/2012

BATES, CALDWELL & CLINTON COUNTIES

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers)	$ 30.52	18.40

SHEE0002-028 07/01/2011

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct and HVAC System)	$ 27.37	8.14

SUMO2011-010 08/11/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 16.00	0.00
LABORER: Common or General	$ 14.83	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with

characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

EXHIBIT G-17

FORM OF PHASE VIII DESIGN/BUILD AGREEMENT

[SEE TAB A.8]

EXECUTION COPY

PHASE VIII DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

Dated as of December 31, 2015

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PHASE VIII DESIGN/BUILD AGREEMENT

This Phase VIII Design/Build Agreement (this "**Agreement**") dated as of December 31, 2015 (the "**Effective Date**") is by and between Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company (the "**Company**"), and (the "**Design/Builder**").

RECITALS

WHEREAS, the Company has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (hereinafter defined), the design, engineering and construction services set forth in this Agreement and the Contract Documents (hereinafter defined); and

WHEREAS, the Design/Builder is ready, willing and able to perform the services required in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "**Additional Services Fee**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.2 "**Affiliate**" means with respect to any entity, a second entity which is controlled by, controls or is under common control with such first entity.

1.3 "**Agreement**" means this Phase VIII Design/Build Agreement and all amendments and/or modifications hereto executed by the Parties.

1.4 "**Allowance**" means the Allowance in Exhibit B to this Agreement.

.

1.6 "**Alternate**" shall have the meaning set forth in Section 9.3.2 hereof.

1.7 "**Amended and Restated Ground Lease**" shall have the meaning set forth in the Operating Agreement.

1.8 "**Applicable Laws**" means all laws (including, without limitation, the Davis-Bacon Act), codes, ordinances, rules, regulations and orders of governmental authorities having jurisdiction over the Site and/or the Work.

1.9 "**Application for Payment**" means the document prepared by the Design/Builder and submitted to the Company showing the Design/Builder's entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.

1.10 "**Architect**" means

1.11 "**Architect Personnel**" has the meaning set forth in Section 6.5.2.1 hereof.

1.12 "**Authorized Representatives**" means those individuals appointed by the Company and the Design/Builder from time to time in accordance with the provisions of Section 3.1.1 and Exhibit K hereof.

1.13 "**CCIP**" shall have the meaning set forth in Exhibit D hereof.

1.14 "**Certificate of Substantial Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Substantially Complete.

1.15 "**Certificate of Final Completion**" means a certificate prepared by the Design/Builder and forwarded to the Company stating that the Design/Builder believes in good faith that the Work or applicable portion thereof is Finally Complete and that the Design/Builder is entitled to final payment in accordance with the provisions of Section 5.13 hereof.

1.16 "**Change Directive**" means a written order signed by the Company directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Schedule. The Company may order changes in the Work within the general scope of this Agreement, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.17 "**Change Order**" means a written order signed by the Design/Builder and the Company authorizing a change in the Work, which also may adjust the Schedule, and which shall constitute a Modification. Schedule may be changed only by Change Order.

1.18 "**Change Proposal**" means a proposal for a Change Order submitted by the Design/Builder to the Company, either at the request of the Company, or at the Design/Builder's own initiative.

1.19 "**Civil Engineer**" means

1.20 "**Claims**" shall have the meaning set forth in Section 2.3.1.2 hereof.

1.21 "**Company**" means Camp Pendleton & Quantico Housing, LLC, a Delaware limited liability company.

1.22 "**Company Event of Default**" shall have the meaning set forth in Section 12.3 hereof.

1.23 "**Company Indemnified Parties**" means the Company, its members, agents, partners and employees.

1.24 "**Construction Agreement**" means that certain Phase VIII Construction Agreement between the Contractor and the Design/Builder, as amended and modified from time to time.

1.26 "**Construction Consultant**" means Bureau Veritas North America, Inc., a Delaware corporation, its successors and assigns.

1.27 "**Construction Documents**" means the plans and specifications prepared by the Architect or a member of the Design Group for the Project, approved by the Company, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All material amendments and modifications to the Construction Documents must be approved by the Company and the Design/Builder prior to incorporation into this Agreement.

1.28 "**Construction Notice to Proceed**" means the notice given by the Company to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of the Project.

1.29 "**Construction Phase**" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Substantial Completion of the Project.

1.30 "**Construction Work**" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Contractor.

1.31 "**Contingency**" shall have the meaning set forth in Section 5.17.

1.32 "**Contract Documents**" means this Agreement, any modifications and amendments to this Agreement, the Construction Documents prepared by the Architect and approved by the Company, and those documents set forth on Exhibit C, all of which form the entire integrated agreement between the Company and the Design/Builder.

1.33 "**Contract Time**" means the period of time as set forth in this Agreement, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.

1.34 "**Contractor**" means

1.35 "**Cost of the Work**" consists of those items of Work which are to be paid for by the Company to the Design/Builder in accordance with the Contract Documents, and includes those categories of costs set forth as allowable on Exhibit D.

1.36 "**CPM**" means a critical path method schedule in the form of precedents, networks and time sequences.

1.37 "**Credit Provider**" shall have the meaning as set forth in the Operating Agreement.

1.38 "**Day**" **or** "**Days**" means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. "**Business Day**" or "**Business Days**" means Days, other than weekend, national or local holidays, in which federal or state government agencies in the State of California are open for business.

1.39 "**Design/Builder**" mean

1.40 "**Design/Builder Event of Default**" shall have the meaning set forth in Section 12.1 hereof.

1.41 "**Design/Builder Indemnified Parties**" means the Design/Builder, the Contractor and the Architect, and each of their respective partners, shareholders, members, managers, directors, officers, employees, subcontractors and agents.

1.42 "**Design/Builder Initiated Change Orders**" means Design/Builder initiated Change Orders other than any Force Majeure Change Orders.

1.43 "**Design Architect Agreement**" means that certain Phase VIII Design Architect Agreement between the Architect and the Design/Builder dated as of the Effective Date, as amended and modified from time to time.

1.44 "**Design Group**" means all architects and engineers having a contract with the Design/Builder or Architect to furnish architectural or engineering services for the Project. Members of the Design Group are listed on Exhibit M attached hereto. The Architect is a member of the Design Group where the context requires.

1.45 "**Design Materials**" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder (a) to the Company under the Contract Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Contract Documents.

1.46 "**Design Phase**" means the period set forth in the Schedule commencing on the Effective Date and ending upon the date the Company approves the Construction Documents.

1.47 "**Design Work**" means that portion of the Work consisting of the design required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design/Builder to the Architect, which shall be performed consistent with the standards of professional care exercised by national design firms.

1.48 "**DoN**" means the United States of America, Department of the Navy.

1.49 "**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement.

1.50 "**Environmental Documents**" means the environmental documents listed on Exhibit C.

1.51 "**Excusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.52 "**Fee**" means the fee payable to the Design/Builder, which is

1.53 "**Final Completion" or "Finally Complete**" means the point at which the Work or a portion thereof has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items.

1.54 "**First Mortgage Loan Documents**" shall have the meaning as set forth in the Operating Agreement.

1.55

1.56 "**Force Majeure**" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design/Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, terrorism, freight embargo, riot, sabotage (by persons other than the Design/Builder, Subcontractors and Team Subcontractors), materially adverse weather conditions, labor or material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and not caused by the fault or negligence of the Design/Builder.

1.58 "**Governmental Approvals**" means those governmental (including agency) actions required to be obtained by the Company and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described on Exhibit F hereto.

1.59 "**Hazardous Materials**" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

2. which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387, as the foregoing may be amended from time to time (collectively, the "**Environmental Laws**");

3. which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

4. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located;

5. the presence of which on the site causes or threatens to cause a nuisance or trespass upon the site or adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; or

6. Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. § 6991.

1.60 "**Hourly Rates for Additional Services**" shall have the meaning set forth in Section 6.5.2.1 hereof.

1.62 "**Inexcusable Delay**" shall have the meaning set forth in Section 4.6.1 hereof.

1.63 "**Landscaping Work**" shall mean the landscaping provided for new units as more fully described in Exhibit A.

1.64 "**Liquidated Damages**" shall have the meaning set forth in Section 4.6.4 hereof.

1.65 "**Managing Member**" mean

1.66 "**Mobilization Plan"** shall have the meaning set forth in Section 2.11 hereof.

1.67 "**Modification**" means an amendment to this Agreement executed by the Parties after the Effective Date.

1.68 "**Non-Demolition Scope of Work**" means the Scope of Work excluding the Serra Mesa Allowance Scope of Work.

1.69 "**Operating Agreement**" means that certain Fifth Amended and Restated Limited Liability Company Operating Agreement of Camp Pendleton & Quantico Housing, LLC dated as of December 31, 2015, as amended from time to time.

1.70 "**OSHA**" shall have the meaning set forth in Section 10.2.2 hereof.

1.71 "**Overhead**" means

1.72 "**Party**" **or** "**Parties**" means the Company and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

1.73 "**Payment and Performance Bonds**" means the payment bond and performance bonds issued by a Surety, in the forms set forth as Exhibit N-1 hereto (with respect to Contractor-furnished payment and performance bonds), covering the faithful performance and completion of the Construction Work at the Site, including payment for all materials and labor furnished or supplied in connection with such Construction Work, by the Contractor, as required under the Construction Agreement.

1.74 "**Phase VIII IDP End Date**" shall have the meaning set forth in the Operating Agreement.

1.75 "**Phase VIII IFP**" shall have the meaning set forth in the Operating Agreement.

1.76 " **Phase VIII Offer**" shall have the meaning set forth in the Operating Agreement.

1.77 "**Product Data**" shall have the meaning set forth in Section 2.15.2.2 hereof.

1.78 "**Project**" means the facilities located on the Site, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred therefrom.

1.79 "**Punch list**" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent occupancy.

1.80 "**Resident Officer in Charge of Construction**" or "**ROICC**" shall have the meaning set forth in Section 2.16.1 hereof.

1.81 "**Retainage**" means the amount withheld from progress payments from the Company to the Design/Builder from time to time, as more fully described in Section 5.5 hereof.

1.82 "**Samples**" shall have the meaning set forth in Section 2.15.2.3 hereof.

1.84 "**Schedule**" means the schedule attached hereto as Exhibit H, pursuant to which the Design/Builder has agreed to achieve Substantial Completion and Final Completion of the Work at the Site. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

1.85 "**Scheduled Date of Substantial Completion**" means those dates contained in the Schedule, pursuant to which the Design/Builder has agreed to achieve Substantial Completion of various portions of the Work in accordance with the Schedule, as adjusted for approved extensions of time.

1.86 "**Scope of Work Submittal Documents**" means Construction Documents prepared to 100% completion.

1.87 [redacted].

1.88 "**Serra Mesa Allowance Scope of Work**" shall have the meaning set forth in Exhibit B hereof.

1.89 "**Serra Mesa Demo Allowance**" shall have the meaning set forth in Exhibit B hereof.

1.90 "**Self-Performed Work**" shall have the meaning set forth in Section 8.3 hereof.

1.91 "**Separate Contractors**" means those individuals or entities (other than the Design/Builder) who have entered into arrangements with the Company for the provision of labor, materials or other services in connection with the Project.

1.92 "**Shop Drawings**" shall have the meaning set forth in Section 2.15.2.1 hereof.

1.93 "**Site**" means the property identified on Exhibit I attached hereto, and any other real property on which the Work will be performed.

1.94 "**Statute of Repose**" shall have the meaning set forth in Section 13.4.4 hereof.

1.95 "**Subcontract**" means an agreement between the Contractor, the Architect, or the Design/Builder (other than agreements between the Design/Builder and the Team Subcontractors) and another person or entity engaged to perform a portion of the Work, together with any and all amendments thereto.

1.96 "**Subcontractor**" means an individual or entity who has entered into an agreement with either the Architect, the Contractor or the Design/Builder (other than Team Subcontractors) for the provision of labor, materials or other services required to be performed by the Design/Builder under the Contract Documents.

1.97 "**Substantial Completion**" **or** "**Substantially Complete**" means, with respect to various portions of the Work, the stage in the progress of such Work when such Work is complete, with the exception of Punch list items, in accordance with the Contract Documents, so that it may be used by the Company for its intended purpose.

1.98 "**Surety**" means one or more issuers of the Payment and Performance Bonds, each of which shall be (a) on the Treasury List for the amount of its responsibility; and (b) licensed to do business in the state where the Project is located.

1.99 "**Team Subcontract**" means an agreement between the Contractor or the Architect and the Design/Builder in which the Design/Builder delegates a portion of its responsibilities under this Agreement, together with any and all amendments thereto.

1.100 "**Team Subcontractors**" means the Contractor and the Architect.

1.101 "**Trustee**" shall have the meaning set forth in the Operating Agreement.

1.102 "**United States Member**" means The United States of America, Department of the Navy, in its capacity as a member of the Company.

1.103 "**Work**" **or** "**Scope of Work**" means all labor, materials and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Exhibit A hereto.

ARTICLE 2
SCOPE OF WORK

2.1 **Performance of Work**.

2.1.1 The Design/Builder covenants and agrees that it shall be responsible for performing and completing, and for causing all Team Subcontractors and Subcontractors to perform and complete, the Work in accordance with the Scope of Work set forth in Exhibit A, and the Schedule set forth in Exhibit H, all as revised pursuant to the terms of this Agreement, the Contract Documents and Applicable Laws. The Design/Builder covenants that the Design Work and the Design Materials provided thereunder shall be appropriate for the purposes stated

in Exhibit A. Although it is the responsibility of the Design/Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change shall be the subject of a Change Order under the provisions of Article 6 hereof.

2.1.2 The Design/Builder has submitted to the Company, and the Company has approved, the Scope of Work Submittal Documents.

2.1.3 The Design/Builder shall take the following actions with respect to the Work:

2.1.3.1 Comply with all current Occupational Health and Safety Administration (OSHA) standards (OSHA standards available at https://www.osha.gov/law-regs.html).

2.1.3.2 Require compliance with all station and Public Works Department (PWD) processes for activities within the Site, such as excavation, hot work, outages, traffic control, and other activities that require station or PWD coordination.

2.1.3.3 Immediately notify the NAVFAC Business Agreement Manager (BAM)/Public Works Officer (PWO)/Resident Officer in Charge of Construction (ROICC) of any damaged utilities that are owned or controlled by the Government.

2.1.3.4 Obtain permission of the cognizant NAVFAC Commanding Officer prior to work on energized electrical circuits or equipment owned or controlled by the Government.

2.1.3.5 Establish and maintain a corporate methodology for safety inspections, documentation, and investigating and reporting mishaps in accordance with OSHA requirements. The methodology shall include a mechanism to distribute lessons learned to reduce the probability of the recurrence of similar events.

2.1.3.6 Immediately notify the NAVFAC BAM/PWO/ROICC of all recordable work-related injuries or illnesses, weight-handling mishaps, or damage to Government property.

2.1.3.7 Provide a copy of the following forms to the PWO/ROICC and Business Agreement Manager:

- Form 300 - Annual log of Work related injuries and illnesses that summarizes mishap information. Log shall include project specific information.
- Form 300A - Quantitative Annual Summary (# of Cases, # of Days Away, # of Various Injury Types) of Work-related injuries and illnesses.
- Form 301, or equivalent - Personal Information and Mishap Summary recorded per incident, provided to PWO or ROICC within one week of a mishap.

In the event there exists a negative mishap trend, if directed to do so by the Business Agreement Manager, develop a corrective action plan that addresses the cause of the mishaps.

2.2 **Professional Standard**.

2.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project, and shall be performed by the Design/Builder, Team Subcontractors and other Subcontractors. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between the Company and either Team Subcontractors or Subcontractors, except as otherwise specifically provided herein.

2.3 **Use of Design Materials**.

2.3.1 Use of Design Materials.

2.3.1.1 The Company shall have unlimited rights to copy and use solely in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to the Company, regardless of degree of completion of the Design Materials, provided that said services performed have been fully paid for as required by the terms of this Agreement (for example, if this Agreement is terminated, the Company has paid all design-related amounts actually incurred by the Design/Builder). The Design/Builder agrees to and does hereby grant to the Company and any assignee or successor of the Company as owner of the Project a royalty-free license to any such Design Materials as to which the Design/Builder may assert any rights under the patent or copyright laws. The Design/Builder, as part of its agreements with any Team Subcontractor, Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold the Company Indemnified Parties harmless from any claims by such entities for copyright or patent infringement. The Design/Builder and Architect expressly reserve the right to utilize and re-use their own style and approach to the design of similar projects.

2.3.1.2 The Company shall indemnify and hold harmless the Design/Builder Indemnified Parties from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "**Claims**") (a) arising from any use by the Company, its successors or assigns of such Design Materials if this Agreement is terminated by the Company prior to Substantial Completion of the Work, or (b) arising as a result of amendments or modifications of any such Design Materials made without the prior written consent of the Design/Builder.

2.4 **Local Conditions; Environmental Site Conditions**.

2.4.1 Local Conditions. Subject to the provisions of Exhibit A, the Design/Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the

performance of the Work. To the extent the Design/Builder encounters subsurface or concealed conditions or existing utilities which differ materially from that actually known by the Design/Builder as of the date of this Agreement, then notice by the Design/Builder shall be given to the Company promptly before conditions are disturbed and in no event later than Business Days after the first observance of the conditions if a Change Order is contemplated by the Design/Builder due to such condition. Such materially different conditions shall entitle the Design/Builder to an equitable adjustment in t Schedule pursuant to the Change Order provisions of this Agreement.

2.4.2 Hazardous Materials. To the extent the Design/Builder encounters Hazardous Materials at the Site (and not brought there by the Design/Builder, Team Subcontractors or Subcontractors), the Design/Builder shall notify the Company in accordance with the provisions of Section 2.4.1 above; provided, however, that the Design/Builder shall have no obligation, whether by Change Order or otherwise, to participate in any way in the removal, disposal or treatment of such Hazardous Materials unless the Design/Builder, at its sole discretion, elects to do so.

2.4.3 Below Grade Utilities. Unless otherwise set forth in Exhibit A, the Design/Builder also includes in the Scope of Work the removal of any below grade utilities which will interfere with new construction and which were identified in the Phase VIII IFP (as it relates to the Work), the Contract Documents listed on Exhibit C, or known as of the Effective Date to the Design/Builder or Affiliates, and the Design/Builder has the option to abandon the existing utilities in place if they do not interfere with new construction, unless otherwise set forth in Exhibit A. If the utilities are made of Hazardous Materials or are insulated with Hazardous Materials, and the Hazardous Materials were identified in the Environmental Documents, the Design/Builder includes the removal in the Scope of Work unless the Design/Builder elects to abandon the utilities in place (unless removal is required under Exhibit A). Any other Hazardous Materials besides those specifically identified in this Section 2.4.3 above are not included in the Scope of Work.

2.5 **Scope of Work Submittal Documents and Construction Documents**.

2.5.1 General. The Company has previously provided an instruction for the Design/Builder to prepare the Construction Documents, and the Design/Builder had accordingly instructed the Architect and its Subcontractors to commence preparation of the Scope of Work Submittal Documents for review and approval by the Company. As of the Effective Date, the Company has reviewed and approved the Scope of Work Submittal Documents. The Scope of Work Submittal Documents and Construction Documents shall be consistent with, and develop in detail, the intent of the Contract Documents, and shall include documents customarily required for regulatory approval by governmental agencies. The Construction Documents shall also provide information customarily necessary for the use of such documents by those in the building trades and include all documents required for the complete and final construction of the Project, other than such details customarily developed in shop drawings or otherwise during construction.

2.5.2 Reliance on Approvals. The Design/Builder shall be entitled to rely on the approvals of the Company with respect to the Design Materials. If the Company revokes, modifies or otherwise changes in a material way its approval, or modifies the original Scope of Work requiring modification to one or more systems or other aspects of the Project which have been designed and approved, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or negligence of the Design/Builder.

2.5.3 Review of Contract Documents and Field Conditions. The Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and measurements and other information known to the Design/Builder with the Contract Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Contract Documents (including, without limitation, the Environmental Documents) and submittals approved in accordance with the durations and procedures set forth in Exhibit H.

2.6 **Legal Requirements**.

2.6.1 Compliance; Notices; Permits.

2.6.1.1 The Design/Builder shall comply with and shall cause the Contractor and all Subcontractors to comply with Applicable Laws, and shall give applicable notices pertaining thereto. In the event of any conflicts between Applicable Laws and this Agreement or the Contract Documents, the Design/Builder is required to comply with Applicable Laws, but the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof, equitably adjusting the Contract Time to the extent such compliance requires a change in the scope of the Work as presently set forth in, or reasonably inferable from, the Contract Documents. All such conflicts shall be immediately brought to the attention of the Construction Consultant and the Company for review. The Design/Builder hereby represents that it has taken commercially reasonable steps to ensure that any materials specifically required to be used under Applicable Laws in effect as of the Effective Date. The Company shall pay for any and all fees and costs associated with any permits (including, but not limited to any site permits or building permits), governmental or quasi-governmental approvals, licenses, inspections, or other approvals necessary in the completion of the Project (including but not limited to any municipal fees, regulatory fees, plan check fees and/or school fees); provided however, the Company shall not be responsible for the payment of any fees or costs associated with trade permits required by Subcontractors in order to perform their specific scopes of Work, which shall be paid by the Design/Builder as a Cost of the Work. To the extent the Company informs the Design/Builder that fees in connection with any trade permits requiring payment by the Design/Builder under the

Contract Documents will be waived by the applicable entities, [redacted] If and to the extent such entities impose charges in the future for such permits, such charges shall be paid by the Company, or shall be the subject of a Change Order to this Agreement in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with the requirements of Exhibit P.

2.7 **Services and Facilities**.

2.7.1 General. The Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design/Builder shall be responsible to the Company for the acts and omissions of, and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of, the Design/Builder's employees, Team Subcontractors, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design/Builder. The Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals.

2.7.3 Coordination. In accordance with the requirements of Exhibit A hereto, the Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Company's staff and reasonably cooperate with the Company's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work. The Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. The Design/Builder shall appoint one or more individuals who shall be authorized to act on behalf of the Design/Builder and with whom the Company may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon the Design/Builder as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The Design/Builder shall advise the Company in writing of the names of the individuals referred to in the preceding sentence.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Company and the United States Member, during the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Company and submitted to the Company within Days of the first day of each month. As part of each such report, the Design/Builder shall provide an updated Schedule, including CPM illustrating the progress which has been made, by reference to the CPM, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.

2.8 **Warranties**.

2.8.1 Construction Warranty. The Design/Builder warrants to the Company that any and all materials, equipment and furnishings incorporated in the Construction Work will be in substantial conformance with the intent of the Phase VIII Offer and the general intent of the Phase VIII IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Design/Builder may reuse some existing utilities in lieu of what is set forth in the Construction Documents, subject to Exhibit A, if in the reasonable opinion of the Civil Engineer for the Project, the utilities are in satisfactory condition. If the Design/Builder elects to reuse existing utilities pursuant to the foregoing, and Exhibit A contemplates Design/Builder's construction of new utilities, a deductive Change Order shall be issued for the cost of the utilities work no longer required. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.2 Intentionally Deleted.

2.8.3 Landscaping Warranty. The Design/Builder warrants to the Company that any and all plants, materials and equipment incorporated in the Landscaping Work will be in substantial conformance with, and of quality as good or better than that required by, the intent of the Phase VIII Offer and the general intent of the Phase VIII IFP (to the extent they relate to the Work) and of quality as good or better than required by the Contract Documents and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Company, may be considered

defective and, at the Company's election may be replaced by the Design/Builder. The cost of such replacement shall be a Cost of the Work. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of the Company to maintain an action for breach of contract against the Design/Builder.

2.8.4 Application of Warranties. The Company and the Design/Builder acknowledge that the Work shall be performed in accordance with the Schedule, and that for purposes of commencement of warranties, warranties with respect to each building or group of buildings shall commence on the date of Substantial Completion such building or group of buildings. If within after the earlier of (A) the date of Substantial Completion of a building or designated portion thereof, or (B) the date for commencement of warranties under the Contract Documents, any of the Work relating to such building or such landscaping, as the case may be, is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of written notice from the Company to do so unless the Company has previously given the Design/Builder a specific written acceptance of such condition after the Company has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Contract Documents. This period of shall be extended with respect to portions of the Work first performed after Substantial Completion of such building to fter Substantial Completion of such extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Agreement. The Company shall give such notice promptly after discovery of the condition. The costs to correct Work which is not in accordance with the requirements of the Contract Documents shall be payable as a Cost of the Work if incurred prior to Final Completion of the Work. Notwithstanding the foregoing, if the correction work referenced in this Section 2.8.4 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.5 No Limitation. Nothing contained in this Section 2.8 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time periods set forth in this Section 2.8 relate only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

2.8.6 Third Party Items. The Design/Builder shall, for the protection of the Company, demand from all suppliers and Subcontractors from which the Design/Builder procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to the Company to the full extent of the terms thereof.

2.8.7 Intentionally Deleted.

2.8.8 Failure to Correct Work. If the Design/Builder fails to correct Construction Work and/or Landscaping Work within a reasonable time after written notice from the Company pursuant to Section 2.8.4, the Company may correct such Work in accordance with the terms of this Agreement. In such case, if the Design/Builder does not proceed with correction of such Construction Work and/or Landscaping Work within a reasonable time, the Company may remove such Work and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal and storage within Days after written notice, the Company may, upon Days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design/Builder should have borne, the Design/Builder shall pay such excess to the Company; if such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Company to the Design/Builder. Such costs shall be payable as provided in Section 5.1 (except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder)).

2.8.9 Acceptance of Nonconforming Work. If the Company prefers to accept Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents, the Company may do so instead of requiring its reperformance If the parties cannot agree, such matter shall be subject to dispute resolution as provided herein. Such adjustment shall be effected whether or not final payment has been made.

2.8.10 Removal of Work. The Design/Builder shall remove from the Site portions of the Construction Work and Landscaping Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the Company. The costs incurred in removing such Work shall be a Cost of the Work if incurred prior to Final Completion of the Work. Notwithstanding the foregoing, if the removal work referenced in this Section 2.8.10 results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor, such cost shall be borne solely by the Design/Builder.

2.8.11 Damaged or Destroyed Work. The Design/Builder shall bear the cost of correcting destroyed or damaged Construction Work or Landscaping Work, whether completed or partially completed, of the Company or Separate Contractors caused by the Design/Builder's correction or removal of Construction Work and/or Landscaping Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be without change to the Schedule nd shall be charged against the Cost of the Work, except to the extent such correction results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder). If such costs arise after Final Completion, such costs shall be payable as provided in Section 5.1.3.

2.10 **Access by Company or United States Member**.

The Design/Builder shall afford the Company, the Construction Consultant, the United States Member and their respective authorized designees access to the Site at all times, subject to reasonable prior notice for access outside of normal business hours.

2.11 **Use of Site**.

The Design/Builder shall prepare a mobilization plan, prior to the start of the Construction Phase, for the Company's review and approval based upon information provided to the Design/Builder by the Company (each a "**Mobilization Plan**"). The Mobilization Plan shall outline all mobilization requirements of the Project including schedule for equipment mobilization and demobilization, laydown area requirement and proposed locations, and any other applicable items. The foregoing Mobilization Plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by the Company. The Design/Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas designated by the Company from time to time as being delivered and available to the Design/Builder. Notwithstanding any other provision of this subsection, the Company acknowledges that the Schedule was developed based on certain representations of the Company regarding the availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design/Builder's activities on a timely

basis, the Design/Builder shall be entitled to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement.

2.12 **Patents, Trademarks, Copyrights**.

The Design/Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Company Indemnified Parties, and shall save the Company Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as a Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the Company, other than pursuant to the recommendation or suggestion of the Design/Builder or a Team Subcontractor; provided however, if the Design/Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the Company with prompt written notice of the Design/Builder's belief, and the Company has nevertheless elected to go forward with such design, process or product so specified.

2.13 **Rubbish; Debris; Cleanup**.

During the performance of all on-site Work, the Design/Builder shall at all times keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. Costs incurred on account of such activities shall be paid as a Cost of the Work. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Company, the Design/Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a “broom clean” condition. If the Design/Builder fails to clean up as provided in the Contract Documents afte Days written notice from the Company, the Company may do so and the cost thereof shall be charged to the Design/Builder or as provided in Section 5.9 of this Agreement.

2.14 **Permits, Fees and Notices**.

2.14.1 To the extent there is a change in the type or cost of any of such permits or inspection occurring after execution of this

Agreement, there shall be an equitable adjustment in the Schedule on account of such change in accordance with the Change Order provisions of this Agreement. The Design/Builder shall comply with and give notices required by Applicable Laws.

2.15 **Shop Drawings, Product Data and Samples**.

2.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design/Builder shall maintain at the Site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Construction Phase. In addition, the Design/Builder shall maintain at the Site approved shop drawings, product data, samples and similar required submittals. These shall be provided to the Company, MCB Camp Pendleton (to the attention of Base Commander), Headquarters Marine Corps (to the attention of the Military Housing Office ("**MHO**")) and the DoN (to the attention of the Business Agreements Manager) in a form reasonably acceptable to the Company, the Base Commander of MCB Camp Pendleton, and Design/Builder within a reasonable time after Final Completion of the Work but not to exceed Days.

2.15.2 Shop Drawings, Product Data and Samples.

2.15.2.1 "**Shop Drawings**" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, the Contractor, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.15.2.2 "**Product Data**" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate materials or equipment for some portion of the Work.

2.15.2.3 "**Samples**" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.15.2.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents.

2.15.2.5 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar submittals. To the extent the Company wishes to review any such Shop Drawings, Product Data, Samples and similar submittals, it shall give reasonable prior notice to the Design/Builder, and shall conduct such review so as not to delay the Work.

2.15.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the Company's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Design/Builder has specifically informed the Company of such deviation at the time of the submittal and the Company has given written approval to the specific deviation.

2.16 **Tests and Inspections**.

2.16.1 Initial Tests and Inspections. Unless otherwise provided for in the Contract Documents, the Design/Builder shall make arrangement for all tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and, to the extent not already a responsibility of the Company under the Contract Documents (i.e., pursuant to Section 2.6.1.1 and 2.14 of this Agreement) the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design/Builder shall give the Company, the Construction Consultant, and the Resident Officer in Charge of Construction ("**ROICC**") timely notice of when and where tests and inspections are to be made so that the Company, the Construction Consultant, and ROICC may observe such procedures.

2.16.2 Additional Tests and Inspections. If the Company or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by Section 2.16.1, the Company will instruct the Design/Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Design/Builder shall give timely notice to the Company of when and where tests and inspections are to be made so the Company may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be without change to the Schedule and shall be paid as a Cost of the Work, except to the extent such required corrections result from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and promptly delivered to the Company.

2.16.4 Timing of Testing and Inspections. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 **Execution, Correlation and Intent**.

2.17.1 Execution of Agreement. Execution of this Agreement by the Design/Builder is a representation that the Design/Builder has visited the Site, become familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents (including, without limitation, the Environmental Documents).

2.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.17.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

2.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words having well-known technical or construction related industry standard meanings are used in accordance with such recognized meanings.

2.18 **Labor and Materials; Liens**.

Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees, Team Subcontractors, Subcontractors and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

The Design/Builder shall not permit any Team Subcontractors, Subcontractors or laborers to place liens on the Project covering any portion of the Work for which the Company has made payment to the Design/Builder. If such liens are imposed, the Design/Builder will satisfy, discharge or bond (if permitted by applicable law) such liens withi Days after written notice from the Company of the existence of such liens (or such shorter period as is required to prevent the foreclosure of or execution on such liens). If the Design/Builder fails to satisfy, discharge or bond (if permitted by applicable law) such liens within such Day period (or such shorter period as is required to prevent the foreclosure of or execution on such liens), the Company may satisfy, discharge or bond (if permitted by applicable law) such liens and charge such cost and any other reasonable costs in connection therewith to the Design/Builder as well as withhold from the Design/Builder the amount of such lien under the provisions of Section 5.9.

2.19 **Cutting and Patching**.

2.19.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching Site utilities, materials, or other Site structures required to complete the Work or to make its parts fit together properly.

2.19.2 Damage to Work of the Company or Separate Contractors. The Design/Builder shall not damage or endanger any portion of the Work or fully or partially completed construction of the Company or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Company or a Separate Contractor except with written consent of the Company and of such Separate Contractor, such consent not to be unreasonably withheld. The Design/Builder shall not unreasonably withhold consent from the Company or a Separate Contractor with respect to cutting or otherwise altering the Work.

2.20 **Uncovering of Construction Work**.

2.20.1 Uncovering. If a portion of the Construction Work is physically covered contrary to the Company's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the Company, be uncovered for the Company's observation and be replaced without change in the Schedule [redacted] except to the extent such replacement results from the gross negligence or willful or wanton misconduct of the Design/Builder and/or Contractor (in which case such costs shall be borne solely by the Design/Builder).

2.20.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the Company has not specifically requested to observe prior to its being covered, the Company may request to see such Construction Work and it shall be uncovered by the Design/Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Company [redacted] An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, it shall be without change to the Schedule [redacted] and the Design/Builder shall pay such costs as a Cost of the Work, unless (a) such condition was caused by the Company or a Separate Contractor in which event the Company shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given, or (b) such deviation from the Contract Documents resulted from the gross negligence or willful misconduct of the Design/Builder and/or Contractor (in which case such cost shall be borne solely by the Design/Builder).

ARTICLE 3
COMPANY'S DUTIES AND RESPONSIBILITIES

3.1 **Information and Services Required of the Company**.

3.1.1 Company Designation of Authorized Representative. The Company shall designate, from time to time, by advising the Design/Builder in writing, one or more Authorized Representatives authorized to act on the Company's behalf with respect to the Project, together with the scope of his/her respective authority, with whom the Design/Builder may consult at all reasonable times. Such designations as of the Effective Date are set forth on Exhibit K hereto. Functions that this Agreement provides will be performed by the Company can be delegated by the Company only by written notice to the Design/Builder from the Company. Exhibit K may be

amended from time to time by the Company pursuant to written notice of such amendment to the Design/Builder. The Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions, instructions and decisions made by Authorized Representatives of the Company shall be binding on the Company.

3.1.2 Communication. During the term of this Agreement, the Company shall communicate with Team Subcontractors, Subcontractors, suppliers and others performing any part of the Work only through the Design/Builder's Authorized Representative designated on Exhibit K hereto, as may be amended from time to time.

3.1.3 Consent and Approval. Whenever the Company's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder's performance of the Work, and this Agreement does not expressly state that the Company may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever the Company's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Company agrees that it shall act in good faith in so cooperating with the Design/Builder. The Company shall cooperate fully with the Design/Builder and shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Company shall have no less time for review and approval than set forth in Exhibit J.

3.1.4 Governmental Approvals. The Company shall be responsible for obtaining the Governmental Approvals set forth on Exhibit F hereto. Any delay in obtaining the Governmental Approvals shall entitle the Design/Builder to an equitable adjustment in the Schedule in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or negligence of the Design/Builder. The Company shall pay for any and all fees and costs associated with any permits (including, but not limited to any site permits or building permits), governmental or quasi-governmental approvals, licenses, inspections, or other approvals necessary in the completion of the Project (including but not limited to any municipal fees, regulatory fees, plan check fees and/or school fees); provided however, the Company shall not be responsible for the payment of any fees or costs associated with trade permits required by Subcontractors in order to perform their specific scopes of Work, which shall be paid by the Design/Builder as a Cost of the Work.

3.1.5 Financial Information. The Company shall, at the written request of the Design/Builder, prior to commencement of the Work and thereafter from time to time, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Company's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. In the event the Design/Builder determines, in its reasonable opinion, that evidence of financial arrangements provided by the Company is unsatisfactory, or if the Company fails to provide evidence of financial information, then the Design/Builder may, upon Days prior written notice to the Company, stop

the Work until satisfactory evidence of financial arrangements has been received by the Design/Builder.

3.2 **Activities on the Site by Company or Separate Contractors**.

3.2.1 Company's Right to Award Separate Contracts. The Company reserves the right to perform work or operations related to the Project (other than the Work) with the Company's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

3.2.2 Integration of the Work with Separate Contractors. Following the request of the Company, the Design/Builder shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to the Company for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors, and the Design/Builder shall work with the Separate Contractors to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

3.2.3 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and its Team Subcontractors and Subcontractors with the activities of the Separate Contractors. The Design/Builder shall participate with all Separate Contractors and the Company in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. The Design/Builder shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work.

3.2.4 Use of Site. The Design/Builder shall afford the Company and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Company and all Separate Contractors' operations as required by the Contract Documents. The Company shall direct the Separate Contractors to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder. The Design/Builder shall not be responsible or liable for the materials and equipment stored on the Site by Separate Contractors.

3.2.5 Deficiency in Work of Separate Contractors. If part of the Design/Builder's Work depends for proper execution or results upon construction or operations by the Company or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Company apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to report shall constitute acceptance by the Design/Builder of the work of Separate Contractors as fit and proper to receive the Design/Builder's Work (except as to those defects or discrepancies that are not apparent), but only to the extent that the Company is

unable to recover against the Separate Contractor damages of the Design/Builder on account of such condition, as set forth below.

3.2.6 Claims Involving Separate Contractors. The Design/Builder shall defend and save harmless the Company and each Separate Contractor against any and all damages or claims that may arise because and to the extent of loss occasioned by the breach of the Design/Builder's obligations hereunder, and the costs associated therewith shall be without change to the Schedule and shall be a Cost of the Work, except as otherwise provided herein. In the event that the Design/Builder unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, the Design/Builder shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays, as Cost of the Work. If any Separate Contractor shall assert a claim or bring an action against the Company alleging damage due to the fault or neglect of the Design/Builder, the Company shall immediately notify the Design/Builder, who shall defend such claim. If it is determined that the Design/Builder was at fault, the Design/Builder shall pay all costs of defense, including attorneys' fees, as well as any resulting judgment or settlement,

3.2.7 Damage or Injury by Separate Contractors. In the event that any Separate Contractor unnecessarily and unreasonably delays the Work by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated herein, the Company shall, in such event, pay all reasonable direct incremental costs and expenses incurred by the Design/Builder due to any such delays, and shall grant an equitable time extension, pursuant to the Change Order provisions of this Agreement.

3.3 **Assignment of Separate Contracts**.

If the Company determines that it wishes to assign to the Design/Builder one or more contracts between the Company and a Separate Contractor, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide 100% payment and performance bonds covering such work from sureties meeting the standards set forth herein. Such contract shall contain provisions similar to those contained in the Design/Builder's, Contractor's and/or Architects' agreements with their Subcontractors with respect to liability, indemnification, retainage, payment, labor and other material items. Upon the Design/Builder's approval of the assignment of such contract, such Separate Contractor shall cease to be a

3.4 **Company's Right to Stop the Work**.

If the Design/Builder persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, the Company, by written order signed by the Company, may deliver a notice to the Design/Builder setting forth that such a persistent and material failure is occurring and has occurred, and demanding that the Design/Builder commence a cure of such persistent and material failure within Days and diligently pursue such cure thereafter. In the event that the cure is not commenced within such Day period and pursued diligently thereafter, the Company may, by a second written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of the Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Company to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper).

3.5 **Company's Right to Carry out the Work**.

If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a Day period after receipt of written notice from the Company to commence and diligently continue correction of such default or neglect with diligence and promptness, the Company may after Day period give the Design/Builder a second written notice to correct such deficiencies within suc Day period. If the Design/Builder within suc Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, the Company, without prejudice to other remedies the Company may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design/Builder are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Company.

ARTICLE 4
TIME

4.1 **Progress and Completion**.

The Design/Builder shall commence the Work immediately after the Effective Date and shall use commercially reasonable good faith efforts to achieve Substantial Completion by the dates set forth in the Schedule.

4.2 **Schedule Obligations**.

4.2.1 Contract Schedule. The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction activities, their sequences and elapsed completion time from the

Effective Date of this Agreement. The Schedule shall set forth a separate date of Substantial Completion for each building. The Scheduled Dates of Substantial Completion set forth in the Schedule shall not be modified except by a Modification or Change Order.

4.2.2 Prosecution of the Work. The Design/Builder shall use commercially reasonable good faith efforts to prosecute the Work so that the portion of the Work completed at any point in time is not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by the Design/Builder within any time period required by the Schedule is less than the amount therein specified, the Design/Builder shall so notify the Company.

4.3 **Preconstruction Activities**.

Withi Days after the Effective Date, the Design/Builder shall submit to the Company for review a detailed schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design/Builder, and identify all interface activities of the Company.

4.4 **Construction Activities**.

At such time as the Construction Documents are ready to be bid, the Design/Builder shall submit to the Company for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the Scheduled Date(s) of Substantial Completion of the Project. This revised Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities for the Construction Phase.

4.5 **Intentionally Deleted**.

4.6 **Delays**.

4.6.1 Excusable Delays. To the extent any of the following events results in an actual delay in the Work, such delay shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

4.6.1.1 Failure or inability of the Company to make available any or all of the Site in accordance with the requirements of the Schedule.

4.6.1.2 Failure or inability of the Company or the Design/Builder to obtain: (i) any and all necessary zoning changes, variances, code changes, permits, licenses, inspections, approvals and authorizations from federal, state, or local governments or quasi-governmental agencies or authorities or homeowner's agencies or public interest groups; or (ii) failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Design/Builder.

4.6.1.3 Delays resulting from the acts or omissions of Separate Contractors.

4.6.1.4 Delays resulting from Force Majeure.

4.6.1.5 Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design/Builder in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions, including the provisions contained in Section 2.4.1.

4.6.1.6 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by the Design/Builder.

4.6.1.7 Delays resulting from changes in Applicable Laws occurring after the Effective Date.

4.6.1.8 Delays resulting from the acts or omissions of the Company and those within the control of the Company, or failure of performance by the Company or those within the control of the Company.

4.6.2 Schedule Amendment Due to Excusable Delays. The Design/Builder shall notify the Company of the Excusable Delay as soon as practicable, but in no event more than Days after the Design/Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed. After the cessation of the Excusable Delay, the Design/Builder shall notify the Company of the number of Days the Design/Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the Excusable Delay arises as a result of a Change Order request by the Company, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

4.6.3 Decision by Company. Within Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then current status of Excusable Delays and Inexcusable Delays, the Company will provide the Design/Builder with written notice of the Company's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within Days after receipt by the Company of the Design/Builder's written request for such determination. The issuance by the Company of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design/Builder may take such acceleration or other measures on account of the Company's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in the Company's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Company

4.6.4 Liquidated Damages. In the event and to the extent there is an Inexcusable Delay in the Work and the actual date of Substantial Completion of a portion of the Work is later than the Scheduled Date of Substantial Completion for such portion of the Work as set forth on Exhibit H (and as adjusted pursuant to the terms of this Agreement), the Design/Builder shall be required to pay liquidated damages ("**Liquidated Damages**") in an amount

4.8 **No Damages on Account of Delay**.

The Design/Builder and the Company acknowledge that in the event that the Design/Builder fails to achieve Substantial Completion of the Work by the dates established in the Schedule, as adjusted, the Company may incur damages. Nevertheless, as part of the overall agreement between the Company and the Design/Builder, the Parties agree that the Design/Builder shall not be responsible for any damages, whether direct, indirect, special, consequential or punitive, incurred by the Company as a result of the failure of the Design/Builder to achieve Substantial Completion of the Work on or before the dates set forth in the Schedule except as otherwise provided in Section 4.6.4 of this Agreement.

ARTICLE 5
PAYMENT AND COMPLETION;

5.1.2 Payment. The Company shall pay the Design/Builder in current funds for the Design/Builder's performance of this Agreement

5.2 **Schedule of Values**.

The Design/Builder has submitted to the Company, and the Parties have agreed upon the schedule of values shown in Exhibit E which sets forth the various portions of the Work, This schedule of values shall be used as a basis for payment and shall be updated periodically. All estimated construction costs not allocated to a trade work line item or to general conditions in the schedule of values shall be allocated to the Contingency and shall be utilized as described in Section 5.17.

5.3 **Applications for Payment**.

The Design/Builder shall deliver to the Company on or before the last Business Day of each month an Application for Payment covering . Provided the Application for Payment is received not later than the last Day of the month, the Company shall make payment to the Design/Builder not later than the Day of the following month. If an Application for Payment is received by the Company after the last Day of the month, payment shall be made by the Company not later than Days after the Company receives the Application for Payment. With each Application for Payment the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of the Cost of the Work during such month and the percentage of completion of each category of Work including but not limited to: (i) conditional lien waivers, in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject of such Application for Payment and who have billings in excess of $25,000; (ii) unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to the Company, executed by the Design/Builder, the Contractor and all Subcontractors, materialmen and others who may have lien rights whose Construction Work is the subject to the prior month's Application for Payment and who have billings in excess of $25,000; or (iii) other reasonable documentation or evidence as required by the Company's lender. If the Company disputes any portion of an Application for Payment, it shall notify the Design/Builder in writing within Days of receipt, which notice shall set forth in detail those items disputed. The Company shall not be required to make payment on account of items about which it has a good faith dispute.

5.5 **Retainage**.

5.5.1 With respect to the Design Phase

5.5.2 With respect to Construction Work, Retainage on the Construction Work shall be withheld until such Construction Work is complete; thereafter, no further Retainage will be withheld. No Retainage shall be withheld on account of Overhead, Fee, general conditions, or self-performed work payable directly to the Design/Builder or the Contractor or purchase orders entered into by the Design/Builder or the Contractor. Subject to the First Mortgage Loan Documents, Retainage withheld on account of the Construction Work shall be released upon Substantial Completion of such Construction Work, less of the value of any uncompleted Construction Work or Punch list items relating to such buildings. Subject to the First Mortgage Loan Documents, Retainage withheld on account of uncompleted Construction Work or Punch list items shall be released upon completion of such uncompleted Construction Work or Punch list items. Subject to the First Mortgage Loan Documents, all remaining Retainage shall be fully released within Days of Final Completion of the entire Construction Work.

5.6 **Early Release of Subcontractor Retainage**.

If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design/Builder may request the Company to disburse the Retainage allocable to such Subcontractor, after delivering to the Company any necessary consent to such disbursement from such Subcontractor's surety, in form reasonably satisfactory to the Company. If the Company is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Company shall disburse the Subcontractor's share of Retainage. Regardless of whether the Company has disbursed said Retainage to any Subcontractor, the warranty period with respect to such Work shall commence at Substantial Completion of the Work or designated portion thereof.

5.7 **Payment for On-Site and Off-Site Stored Materials**.

Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment shall similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design/Builder furnishing evidence to the Company that (a) title to the materials and equipment will pass to the Company upon payment; (b) the materials and equipment are adequately insured; and (c) such other matters as the Company may reasonably request in order to protect its interests.

5.8 **Title to Construction Work**.

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

5.9 **Withholding of Payment**.

The Company may withhold payment on account of an Application for Payment to the extent necessary to protect the Company from loss because of:

5.9.1

5.9.2

5.9.3

5.9.4

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Section, the Company shall meet with the Design/Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding. Amounts withheld pursuant to Section 5.9.2 shall bear interest at the rate of from the date the funds would otherwise have been due until paid. In lieu of withholding, the Design/Builder may provide assurances or collateral reasonably satisfactory to the Company.

5.10 **Failure of Payment; Interest**.

If the Company does not pay the Design/Builder within Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Company claims in good faith is due in accordance with the provisions hereof), then the Design/Builder may, upon Days' written notice to the Company, stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule hall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest from the date payment is due until paid at the rate of

5.11 **Substantial Completion**.

When the Design/Builder considers that a building, unit or other portion of the Work is Substantially Complete, the Design/Builder shall prepare and submit to the Company a comprehensive list of Punch list items relating to such building, unit or other portion of the Work. The Design/Builder shall proceed promptly to complete and correct Punch list items. Failure to include an item on the Punch list does not alter the responsibility of the Design/Builder to complete all Work relating to such building, unit or other portion of the Work, in accordance with the Contract Documents. Upon receipt of the Punch list, the Company will make an inspection to determine whether Substantial Completion of the building, unit or other portion of the Work has occurred. The Certificate of Substantial Completion for each building, the form of

which is attached hereto as Exhibit G-1, shall state the date of Substantial Completion and shall be executed by the Company and the Design/Builder and acknowledged by the Construction Consultant. At Substantial Completion of each building, the Company will become responsible for utilities, security, maintenance, and any insurance for the building, unit or other portion of the Work. If the Company and the Design/Builder cannot agree as to the appropriate date of Substantial Completion of a building, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch list items with completion not later than Days after the date of Substantial Completion, except for long lead items. Warranties required by the Contract Documents shall commence, with respect to each building, on the date of Substantial Completion of such building, unless otherwise provided in the Contract Documents.

5.12 **Partial Occupancy or Use**.

The Company may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate written agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Company and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, the Company and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

5.13 **Final Completion and Final Payment**.

5.13.1 Final Completion of a Building. When the Design/Builder considers that a building, unit or other portion of the Work is Finally Complete, the Design/Builder shall so notify the Company. The Certificate of Final Completion, the form of which is attached hereto as Exhibit G-2, shall set forth the date of Final Completion for such building, unit or other portion of the Work and shall be executed by the Company and the Design/Builder and acknowledged by the Construction Consultant. If the Company and the Design/Builder cannot agree as to the appropriate date of Final Completion of a building, unit or other portion of the Work, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement.

5.13.2 Conditions Precedent to Final Payment on Account of a Building. Neither final payment nor any final release of Retainage shall become due until the conditions in the First Mortgage Loan Documents are satisfied, and the Design/Builder submits to the Company:

5.13.2.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the building have been paid or otherwise satisfied;

5.13.2.2 a certificate evidencing that insurance required by the Contract Documents to remain in force is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Company;

5.13.2.3 consent of Surety to final payment of the entire Work; and

5.13.2.4 if required by the Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Team Subcontractor or Subcontractor refuses to furnish a release or waiver required by the Company, the Design/Builder may furnish a bond satisfactory to the Company to indemnify the Company against such lien.

5.13.3 Delay in Final Completion. If, after Substantial Completion of the Work on account of a building, Final Completion of such building is materially delayed through no fault of the Design/Builder or by the issuance of additional Change Orders or Change Directives by the Company, the Company shall, upon request of the Design/Builder, and without terminating this Agreement, make payment of the balance due for that portion of the building fully completed. If the remaining balance for the building not fully completed is less than the Retainage applicable thereto, such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design/Builder or the Company.

5.13.4 Waiver of Claims at Final Payment.

5.13.4.1 Acceptance of final payment for the entire Work by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of final payment.

5.13.4.2 The making of final payment for the entire Work by the Company shall constitute a waiver of claims by the Company, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment, or identified in writing as unsettled at the time of final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents or this Agreement.

5.14 **Allowances**.

Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Company may direct, but the Design/Builder shall not be required to employ persons or entities against which the Design/Builder makes reasonable objection. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge that the Design/Builder shall not commence the Serra Mesa Allowance Scope of Work until the Design/Builder has received written direction from the Company (the "**Allowance Written Direction**") to proceed with such Serra Mesa Allowance Scope of Work; provided however, the

Design/Builder shall not commence such Serra Mesa Allowance Scope of Work before month sixty (60) of the Schedule. In the event the Design/Builder has not received such Allowance Written Direction on or before the Phase VIII IDP End Date, the Design/Builder and the Company shall execute a Change Order pursuant to Article 6 deducting such Serra Mesa Allowance Scope of Work from the Scope of Work (the "**Deductive Allowance Change Order**"). Unless otherwise provided in the Contract Documents:

5.14.1 materials and equipment under an allowance shall be selected promptly by the Company to avoid delay in the Work, provided that the Company shall be given no less time than provided in Exhibit J;

5.14.2 allowances shall cover the cost to the Design/Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

5.14.3 allowances shall cover Design/Builder's costs for unloading and handling at the Site labor, installation costs and other expenses; and

5.15 **Superintendent**.

The Design/Builder shall cause the Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

5.16 **Documents and Samples at the Site**.

The Design/Builder shall maintain at the Site for the Company one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. The Design/Builder shall also prepare one reproducible set of as-built drawings. These shall be provided to the Company within a reasonable time after Final Completion of the Work.

5.17 **Contingency**.

Such Contingency shall be increased by amounts not expended on other line items in the schedule of values other than Fee and Overhead, and shall be decreased by additional amounts required to be expended on other line items in the schedule of

values other than Fee and Overhead. The Contingency is for the sole use of the Design/Builder for items within the Scope of Work of the Design/Builder, and is not for use by the Company for items that are a Change Order to the Design/Builder. To the extent funds remain in the Contingency as of the date of Final Completion of the entire Project Notwithstanding the foregoing: (1) reduction in the line item amount for Landscape Amenity and Community Buildings in excess of of the value thereof shall require the approval of the Company; and (2) increase in the line item amount for general conditions in excess of of the value thereof shall require the approval of the Company, in each case such approval not to be unreasonably withheld.

ARTICLE 6
CHANGES IN THE WORK; CLAIMS

6.1 **Changes**.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or the Design/Builder, the applicable unit prices shall be equitably adjusted.

6.2 **Change Directives**.

The following procedures shall apply with respect to Change Directives:

6.2.1 Any Change Directive with an apparent value in excess of must be approved by both the Managing Member and the United States Member. The United States Member shall respond to any Change Directive within Days of receiving the request for a Change Directive. Upon receipt of a Change Directive signed by the Company, the Design/Builder shall promptly proceed with the change in the Work involved If the Design/Builder receives a written communication signed by the Company, which the Design/Builder believes is a Change Directive, but is not so identified, it shall not proceed with the change in the Work until it receives from the Company a written confirmation that such communication is in fact a Change Directive.

6.2.2 A Change Directive signed by the Design/Builder indicates the agreement of the Design/Builder with the contents thereof, and shall convert the Change Directive to a Change Order.

6.2.3 If the Design/Builder does not respond promptly or disagrees with the method for adjustment in the Schedule, the method and adjustment shall be determined as provided

in Section 6.5 below. In such case, the Design/Builder shall keep and present, in such form as the Company may request, an itemized accounting, together with appropriate supporting data.

6.2.4 Pending final determination of cost to the Company, amounts not in dispute shall be included in Applications for Payment. hen both additions and credits covering related Work or substitutions are involved in a change, the allowance for Overhead and Fee shall be figured on the basis of net increase, if any, with respect to that change.

6.2.5 If the Company and the Design/Builder do not agree with the adjustment in the Schedule such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

6.3 **Change Proposals**.

If the Company requests the Design/Builder to submit a Change Proposal and thereafter the Company elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred by the Design/Builder on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

6.4 **Claims**.

In addition to submitting Change Proposals in response to the request of the Company, the Design/Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the Schedule permitted pursuant to the provisions of this Agreement. In such cases, the Design/Builder shall give the Company written notice within Days after it becomes aware of the event giving rise to the Change Proposal. The Company shall have Days after receipt of the Design/Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design/Builder or the Company becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the non-claiming party.

6.5 **Payment on Account of Change Orders and/or Excusable Delays**.

6.6 **Changes on Account of Delay in Commencement of Work**.

6.8 **Time Extensions on Account of Change Orders**.

The Design/Builder shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

ARTICLE 7
TRANSFER OF CARE, CUSTODY AND CONTROL

7.1 **Care, Custody and Control by Design/Builder During Construction**.

The Design/Builder shall be responsible for the care, custody and control of the Site or portion thereof, including responsibility for compliance with applicable safety and environmental laws, rules, regulations and orders only during the period from (i) issuance of a notice to proceed and release of possession of such Site or portion thereof by Company to Design/Builder for construction until (ii) Substantial Completion or other transfer of care, custody and control of such Site or portion thereof back to Company in accordance with Section 7.2 below. The Parties acknowledge that full execution of this Agreement as of the Effective Date shall constitute the Company's "Construction Notice to Proceed" required hereunder. Accordingly, such Construction Notice to Proceed shall be dated as of the Effective Date.

7.2 **Substantial Completion; Partial Occupancy or Use**.

At Substantial Completion of the entire Work, the care, custody and control thereof shall pass to the Company. In any event, the care, custody, and control of the Site or portion thereof shall pass to the Company no later than the time when the Company takes physical possession thereof. From and after the date of the transfer of the care, custody, and control of the Site or portion thereof, the Company shall assume all risks of physical loss or damage thereto and shall, and does hereby, release the Design/Builder from its responsibility for the care, custody and control of the applicable portion of the Site, and the Company will and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors for loss or damage to the Site or portion thereof which may thereafter occur. In the event that loss or damage to the Site or portion thereof occurring after Substantial Completion is due to the negligence of the Design/Builder or defective Work performed by the Design/Builder, the

Design/Builder shall be responsible for any insurance deductibles paid by the Company on account of such negligence or defective Work. Notwithstanding the foregoing to the contrary, nothing in this Section 7.2 shall limit the Design/Builder's warranty obligations set forth in this Agreement.

ARTICLE 8
TEAM SUBCONTRACTORS AND SUBCONTRACTORS

8.1 **Team Subcontractors**.

The Design/Builder has entered into a Team Subcontract with the Architect pursuant to which the Design/Builder delegated all design responsibilities contained in this Agreement to the Architect. Similarly, the Design/Builder shall enter into a Team Subcontract with the Contractor pursuant to which the Design/Builder shall delegate the construction responsibilities contained in this Agreement to the Contractor. The Team Subcontracts shall require each Team Subcontractor, to the extent of the Work to be performed by such Team Subcontractor, to assume towards the Design/Builder all the obligations and responsibilities which the Design/Builder by the Contract Documents assumes towards the Company. All Team Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Team Subcontractor. Each Team Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Team Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include a provision granting to the Company the right to succeed to the interest of, or otherwise accept an assignment of, such Team Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under any bond relating to the Agreement.

8.2 **Subcontracts**.

8.2.1 Incorporation of Contract Documents. The Team Subcontractors shall enter into Subcontracts with various Subcontractors for portions of the Work delegated pursuant to the Team Subcontracts. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards the Team Subcontractor all the obligations and responsibilities which the Team Subcontractor by the Team Subcontracts assumes towards the Design/Builder. All Subcontracts shall incorporate the terms of the relevant Team Subcontract, this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

8.2.2 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of the Company under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall include provisions (a) granting to the Design/Builder the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of the Team Subcontract by the Design/Builder (or its assignee) due to the existence of a default by the Team Subcontractor; and (b) granting to the Company the right to succeed to the interest

of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by the Company due to the existence of a Design/Builder Event of Default and a further termination of the Team Subcontract by the Company. Any such assignment shall be subject to the prior rights of the surety, if any, obligated under bond relating to the Team Subcontract.

8.3 **Self-Performed Work**. The Contractor may perform portions of the Construction Work with its own personnel or pursuant to Subcontracts with affiliates of the Contractor ("**Self-Performed Work**"). With respect to such Self-Performed Work, the Contractor shall be deemed to be a Subcontractor for purposes of calculating amounts payable under Change Orders. The terms and conditions under which the Contractor or its affiliates perform Self-Performed Work shall be competitive and at market rates.

8.4 **Subcontractor Bids**. The Design/Builder shall use commercially reasonable efforts to obtain a minimum of three bids from qualified subcontractors for each trade that will provide labor and materials for the Project having a value in The Design/Builder will then select the subcontractor that represents the best value for the Project.

ARTICLE 9
INSURANCE AND BONDS; INDEMNIFICATION

9.1 **Insurance to be Provided by the Design/Builder**.

The Design/Builder shall provide the insurance required of it by the provisions of Exhibit L hereto, the cost of which shall be paid by the Design/Builder as a Cost of the Work.

9.2 **Insurance to be Provided by the Company**.

The Company shall provide the insurance required of it by the provisions of Exhibit L,

9.3 **Payment and Performance Bonds**.

9.3.1 The Contractor shall furnish and deliver to the Company and the Design/Builder the Payment and Performance Bonds in a form acceptable to the Credit Provider. The Contractor shall deliver the Payment and Performance Bonds in a form acceptable to the Credit Provider prior to, and as a condition precedent to, commencement of the Construction Work at the Site.

9.3.2 The Payment and Performance Bonds shall be furnished on behalf of the Contractor, shall name the Design/Builder, the Company, the DoN and the Trustee as co-obligees, Prior to the commencement of the Work on any alternate under the Construction Agreement ("**Alternate**"), the Surety that issued the relevant Payment and Performance Bond shall approve the inclusion of such Alternate in the coverage provided by the Payment and Performance Bond. The Design/Builder shall require the Contractor to provide additional payment and performance bonds so that the combined value of the Contractor payment and performance bonds exceeds the entire Cost of the Work in the Construction Agreement, as and when provided in the Construction Agreement, provided, however, that at all times, the value of Payment and Performance Bonds in effect shall meet the requirements of 10 U.S.C. Section 2885. All payment and performance bonds issued pursuant to this Section shall name the Design/Builder, the Company, the DoN and the Trustee as co-obligees, and shall be in the forms set forth on Exhibit N. All payment and performance bonds issued with respect to the Contractor shall be issued by a Surety. All other payment and performance bonds shall be issued by sureties that appear on the approved list of sureties issued by the United States Department of Treasury.

9.3.3 The provisions of this Section 9.3 may not be modified or amended without the prior written consent of the Credit Provider.

9.4 **Indemnification**.

9.4.1 Indemnification by Design/Builder.

9.4.2 Indemnification by Company.

9.4.3 The Company's Property. As provided by Article 7 hereof, as between the Design/Builder and the Company, the Company assumes responsibility and risk for all loss of or damage to property owned by or in the custody of the Company, however such loss or damage shall occur, and agrees to maintain appropriate property damage insurance fully covering said property from such risk naming the Design/Builder as additional insured and does hereby and shall cause its insurers to waive rights of subrogation against the Design/Builder and its suppliers and Subcontractors under any insurance which the Company may carry.

9.5 **Company Agreement**.

The Company, on its own behalf and on behalf of the Company's officers, directors, agents and affiliates, agrees that no contract claim shall be made against the Contractor or the Architect for obligations of the Design/Builder unless the Company is expressly authorized to do

so pursuant to the provisions of this Agreement, including, but not limited to, a claim alleging that the Design/Builder's corporate status should be ignored in favor of claims against the Contractor and/or the Architect.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 **Safety Precautions and Programs**.

10.1.1 Site Safety. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

10.1.2 Notices. In connection with the performance of the Work, the Design/Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

10.2 **Safety of Persons and Property**.

10.2.1 Reasonable Precautions. The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Design/Builder; and

10.2.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

10.2.2 Safeguards. The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Company and users of adjacent sites and utilities, and shall comply fully with the requirements of the Occupational Safety and Health Administration ("**OSHA**").

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

10.2.4 Remedy of Damage. The Design/Builder shall promptly remedy damage and loss (other than damage or loss under property insurance required by Exhibit L to be carried by the Company or the Company's Separate Contractors) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design/Builder or anyone directly employed by or in control of Design/Builder and for whose acts Design/Builder may be liable and for which the

Design/Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Company, Separate Contractors or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design/Builder. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's obligations under Section 9.4; provided, however, that the Design/Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefor pursuant to the provisions of Section 9.4).

10.2.5 Designation of Safety Coordinator. The Design/Builder shall designate or cause to be designated a responsible member of its organization at the Site who has the responsibility for the prevention of accidents.

10.2.6 Loads. The Design/Builder shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger anyone's safety.

10.3 **Security**.

The Design/Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design/Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design/Builder shall take all precautions and measures as may be reasonably necessary to secure the Site at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

10.4 **Damage to Property at the Site**.

The Design/Builder shall be responsible for any and all damage to property at the Site except to the extent caused by the acts or omissions of the Company or its Separate Contractors, representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the Design/Builder pursuant to its obligations under this Article shall be paid by the Design/Builder as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, unless caused by Force Majeure, in which case the provisions of Article 6 shall govern.

10.5 **Damage to Property of Others**.

The Design/Builder shall avoid damage, as a result of the Design/Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the Company. The Design/Builder shall repair any such damage caused by the operations of the Design/Builder and shall bear the expense relating thereto as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

10.6 **Failure of Design/Builder to Repair Damage**.

If the Design/Builder fails to commence and diligently pursue the repair of damage to property as set forth in this Article, then the Company, after Days prior written notice to the Design/Builder (provided the Design/Builder has not commenced such repair during such Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design/Builder amounts paid or incurred by the Company in correcting such damage.

10.7 **Emergencies**.

In an emergency affecting the safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss. The United States Member shall have the authority to immediately suspend work when life threatening safety violations or practices are observed or found. Additional costs or extensions of time claimed by the Design/Builder on account of an emergency not caused by the fault or neglect of the Design/Builder shall be determined as provided in Section 6.2 hereof.

ARTICLE 11
DISPUTES

11.1 **Disputes between Company and Design/Builder**.

In the event of any dispute arising between the Company and the Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

11.2 **Dispute Resolution Procedures**.

11.2.1 Initial Meeting to Resolve Disputes. Either Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the Design/Builder's offices within Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative

11.2.2 Mediation.

11.2.2.1 If the dispute has not been resolved within Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in

design and construction matters, shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within Days after his/her appointment, which meeting shall be attended by the Company's Authorized Representative, the Design/Builder's Authorized Representative During such Day period, the mediator may meet with the Parties separately.

11.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

11.2.3 Arbitration.

11.2.3.1 Any controversy or dispute not resolved through non-binding mediation shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party after exhausting the mediation procedures set forth herein. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The Company or the Design/Builder shall be entitled to (a) consolidate any arbitration involving Design/Builder with related arbitrations involving other parties; or (b) join any other parties to such arbitration.

11.2.3.2 The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of then at the election of either Party, there shall be a panel of three arbitrators. If the Parties do not mutually agree on an arbitrator or arbitrators who is/are willing and able to serve, the Parties shall then utilize the American Arbitration Association (or another entity acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the Effective Date. The arbitrator(s) shall have no direct or indirect social, political or business relationship of any sort with any of the Parties, their respective legal counsel, or any other person or entity materially involved in the Project.

ARTICLE 12
EVENTS OF DEFAULT AND REMEDIES; TERMINATION

12.1 **Design/Builder Events of Default**.

Each of the following shall be considered a "**Design/Builder Event of Default**":

12.1.1 if the Design/Builder persistently fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after Days written notice from the Company, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

12.1.2 if the Design/Builder materially breaches this Agreement and fails, after Days written notice from the Company, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Team Subcontractors for materials or labor in accordance with the respective agreements between the Design/Builder and the Team Subcontractors or persistent disregard of Applicable Laws);

12.1.3 if a custodian, trustee or receiver is appointed for the Design/Builder, or if the Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.2 **Remedies of the Company upon a Design/Builder Event of Default**.

12.2.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, the Company shall have the right to terminate this Agreement upon an additional Days written notice to the Design/Builder, provided that the Design/Builder has not commenced a cure within such Day period and thereafter continues to diligently cure until completion. Without prejudice to any other rights or remedies of the Company, the Company, upon any such termination, subject to any prior rights of the Surety, may:

12.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design/Builder;

12.2.1.2 accept assignment of the Team Subcontracts and/or Subcontracts; and

12.2.1.3 finish the Work by whatever reasonable method the Company may deem expedient.

When the Company terminates this Agreement as aforesaid, the Design/Builder shall not be entitled to receive further payment until the Work is finished.

12.3 **Company Events of Default**.

Each of the following shall be considered a "**Company Event of Default**":

12.3.1 if the Work is stopped for a period of Days through no act or fault of the Design/Builder for any of the following reasons:

12.3.1.1 issuance of an order of a court or other public authority having jurisdiction;

12.3.1.2 an act of government, such as a declaration of national emergency, making material unavailable;

12.3.2 if the Work is stopped for a period of Days through no act or fault of the Design/Builder because the Company has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

12.3.3 if the Work is stopped for a period of Days pursuant to the provisions of Section 3.1.5 because the Company has not provided the financial information required by Section 3.1.5; or

12.3.4 if a custodian, trustee or receiver is appointed for the Company, or if the Company becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Company causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Company, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Company, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

12.4 **Remedies of the Design/Builder upon a Company Event of Default**.

If a Company Event of Default exists and is continuing, the Design/Builder may, upon Days additional written notice to the Company, terminate the Agreement and recover from the Company payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment, and services rendered, including reasonable overhead and profit.

12.5 **Representations and Remedies**.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or

acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

12.6 **Termination or Suspension for Convenience.**

12.6.1 Termination for Convenience. The Company may terminate this Agreement, or any portion of Work to be performed hereunder at any time by a notice in writing from the Company to the Design/Builder only if the United States Member terminates the Managing Member for default under the provisions of the Operating Agreement. In such case, the Company shall pay to the Design/Builder all funds due the Design/Builder for Work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Team Subcontractors and Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retainage, shall be released within Days of termination of this Agreement for convenience.

12.6.2 Suspension for Convenience. The Company may, without cause, order the Design/Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Agreement. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design/Builder is responsible Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 **Governing Law**.

This Agreement shall be governed by the laws of the State of California, excluding provisions thereof which refer to the laws of another jurisdiction.

13.2 **Successors and Assigns**.

This Agreement and the Contract Documents shall be binding upon and shall inure to the benefit of the Company and the Design/Builder and their respective successors and assigns. Except as provided in the First Mortgage Loan Documents, neither Party shall assign this Agreement as a whole without the prior written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under this Agreement and the Contract Documents.

13.3 **Written Notice**.

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivery by overnight courier, or two (2) Business Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

Naval Facilities Engineering Command, Southwest
1220 Pacific Highway
San Diego, CA 92132
Attention: Business Agreements Manager
Reference: Camp Pendleton & Quantico PPV

Naval Facilities Engineering Command

Special Venture Acquisition
1322 Patterson Avenue, SE, Suite 1000
Washington Navy Yard
Washington, DC 20374-5065
Reference: Camp Pendleton & Quantico PPV

13.4 **Commencement of Statutory Limitation Period and Statute of Repose Period**.

13.4.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

13.4.2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.

13.4.3 After Final Completion. As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Builder or the Company, whichever occurs last.

13.4.4 Statute of Repose. The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

13.5 **Modifications**.

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

13.6 **Interpretation**.

13.6.1 Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless relating to all supplements and/or

amendments to any exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

13.6.2 The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

13.7 **Severability**.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect. In the event that any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in a commercially reasonable manner to amend the commercial and other terms of this Agreement in order to effect the intent of the Parties as set forth in this Agreement.

13.8 **Whole Agreement**.

This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein, except as this Agreement is subject to that certain Phase VIII Design/Builder's Consent Agreement dated as of the Effective Date executed by the Design/Builder in favor of the Credit Provider and the Trustee named therein.

13.9 **Accounting Records**.

The Company and the Company's accountants shall be afforded access to the Design/Builder's records, books, correspondence, instructions, drawings, receipts, Team Subcontracts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, except financial information relating to those of the Design/Builder's costs covered by the Overhead, Fee, allowances, fixed rates, or of costs which are expressed in terms of percentages of other costs, and lump sum subcontracts and/or change orders, and the Design/Builder shall preserve these for a period of [redacted] after final payment, or for such longer period as may be required by law.

13.10 **Limitation of Liability**.

13.10.1 Notwithstanding anything in this Agreement to the contrary, in no event shall either the Company or the Design/Builder, their respective members, partners, employees, officers, agents or subcontractors, be liable for consequential, incidental, special or indirect damages, except to the extent of insurance proceeds available therefor.

13.11 **Audit and Records.**

13.11.1 General. As used in this Section 13.11, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

13.11.2 Examination of Costs. The Design/Builder shall maintain, and the Company, the Managing Member and the United States Member shall have the right to examine and audit, all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement.

13.11.3 Cost or Pricing Data. If the Design/Builder has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company, the Managing Member and the United States Member, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of Design/Builder's records, including computations and projections, related to:

13.11.3.1 The proposal for the Change Order, Change Directive or Modification;

13.11.3.2 The discussions conducted regarding the proposal(s), including those related to negotiating;

13.11.3.3 Pricing of the Change Order, Change Directive, or Modification; or

13.11.3.4 Performance of the Change Order, Change Directive, or Modification.

13.11.4 Access. The Company, the Managing Member and the United States Member shall have access to and the right to examine any of Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. The Design/Builder shall make available at its office at reasonable times the information described in this Section for examination, audit, or reproduction, until [redacted] after final payment under this Agreement or for any shorter period specified by the United States Member.

13.11.4.1 If this Agreement is completely or partially terminated, Design/Builder shall make available the records relating to the Work terminated unti[redacted] after any resulting final termination settlement; and

13.11.4.2 In the event of disputes under Article 11 of this Agreement or any litigation between the Company and the Design/Builder, the Design/Builder's directly pertinent records involving transactions related to this Agreement or a subcontract which are not privileged communications between attorney and client or attorney work product shall be made available by the Design/Builder until such time as such disputes or litigation are finally determined, including all appeals relating thereto.

13.11.5 No Required Creation of Records. This Section 13.11 may not be construed to require Design/Builder or subcontractor to create or maintain any record that Design/Builder or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear on the Following Pages]

COMPANY:

CAMP PENDLETON & QUANTICO HOUSING, LLC, a Delaware limited liability company

DESIGN/BUILDER:

[Signature Page to Phase VIII Design/Build Agreement (Page 2 of 2)]

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	
Exhibit F	-	Governmental Approvals
Exhibit G-1	-	Form of Certificate of Substantial Completion
Exhibit G-2	-	Form of Certificate of Final Completion
Exhibit H	-	Schedule
Exhibit I	-	Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N	-	Form of Contractor Payment Bond and Performance Bond
Exhibit O	-	
Exhibit P	-	Davis-Bacon Compliance
Appendix P-1	-	Davis-Bacon Wage Determination

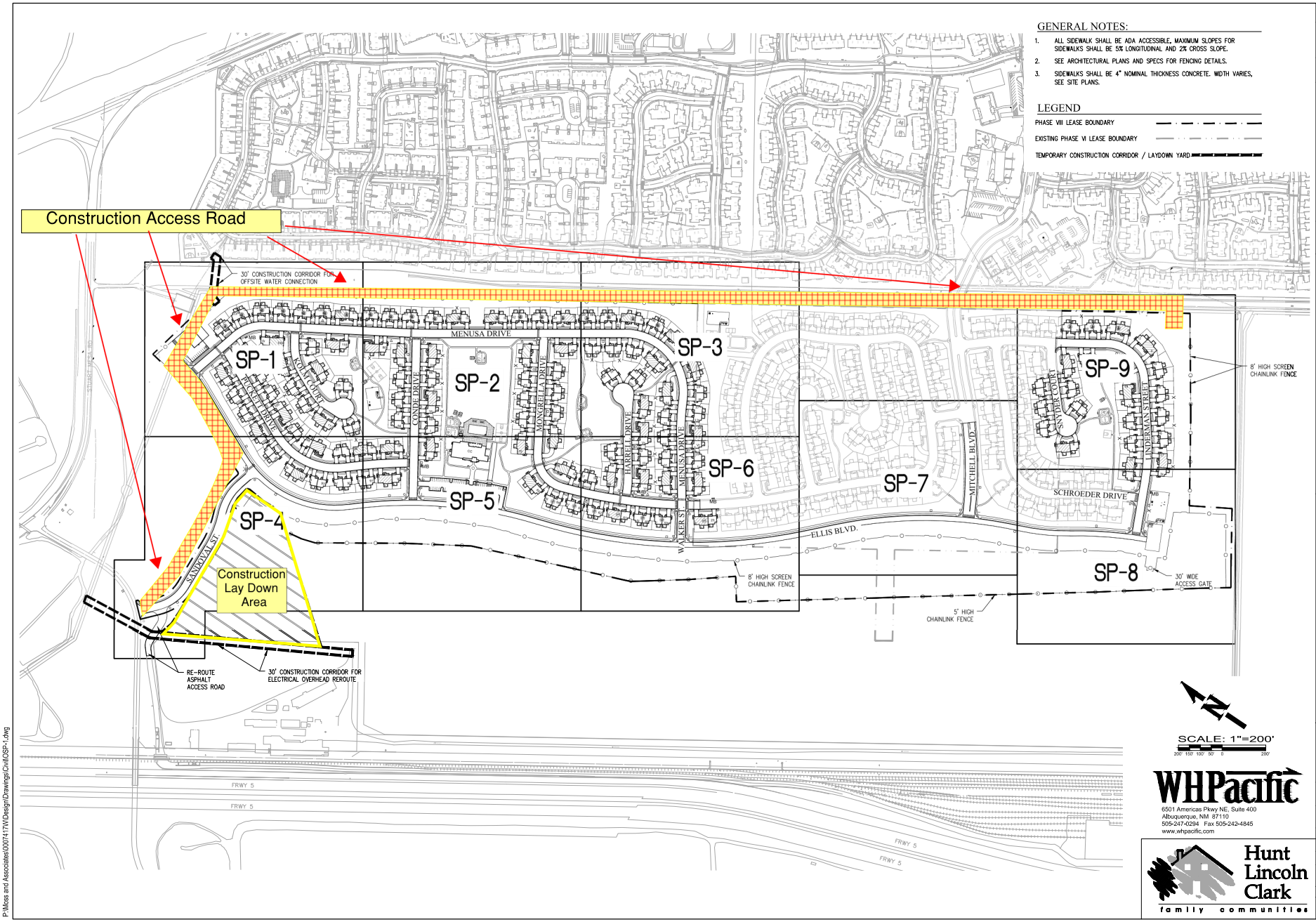
EXHIBIT A

SCOPE OF WORK

[SEE ATTACHED]

Execution Copy

EXHIBIT A



GENERAL NOTES:

1. ALL SIDEWALK SHALL BE ADA ACCESSIBLE, MAXIMUM SLOPES FOR SIDEWALKS SHALL BE 5% LONGITUDINAL AND 2% CROSS SLOPE.
2. SEE ARCHITECTURAL PLANS AND SPECS FOR FENCING DETAILS.
3. SIDEWALKS SHALL BE 4" NOMINAL THICKNESS CONCRETE. WIDTH VARIES, SEE SITE PLANS.

LEGEND

PHASE VIII LEASE BOUNDARY

EXISTING PHASE VI LEASE BOUNDARY

TEMPORARY CONSTRUCTION CORRIDOR / LAYDOWN YARD

SYMBOL	DESCRIPTION	PREP. BY	DATE	APPV'D
	REVISIONS			

100% SUBMITTAL

OVERALL

SITE PLAN
STUART MESA - PHASE VIII

DSGN. | DATE | DIRECTOR | DATE
SUBMITTED BY: | DR. | CHK.
REVIEWED BY: | DATE
D.M. | F.P.
BR. HD.

EFD FOR COMMANDER NAVFAC

DEPARTMENT OF THE NAVY
ENGINEERING FIELD DIVISION SOUTHWEST
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY SAN DIEGO, CALIFORNIA

PHASE VIII of Camp Pendleton & Quantico Housing, LLC
MCB CAMP PENDLETON
PRIVATIZATION OF FAMILY HOUSING
CAMP PENDLETON, CALIFORNIA

BY: HUNT PENDLETON DESIGN / BUILDERS LLC
100 WOSNAN DRIVE OCEANSIDE, CA 92058 (760) 388-4535

SIZE D
IF SHEET IS LESS THAN 22" X 34" IT IS A REDUCED PRINT- SCALE REDUCED ACCORDINGLY

CODE IDENT. NO. 80091

PROJ. LOCATION CAMP PENDLETON, CA

CONSTR. CONTR. NO. N68711-03-C-01M02

SPEC. 00-00-0000

NAVFAC NO. 180606__

SEQ. - OF -

OSP-1

WHPacific
6501 Americas Pkwy NE, Suite 400
Albuquerque, NM 87110
505-247-0294 Fax 505-242-4845
www.whpacific.com

Hunt Lincoln Clark
family communities

P:\Moss and Associates\0007417\WD\design\Drawings\Civil\OSP-1.dwg

EXHIBIT B

EXHIBIT C

<u>CONTRACT DOCUMENTS</u>

[SEE ATTACHED]

EXHIBIT C

LIST OF CONTRACT DOCUMENTS

(Phase VIII Stuart Mesa)

1. Base Exterior Architecture Plan (BEAP) May 2010 – prepared by KTU+A Planning and Landscape Architecture, in accordance with Contract No. N62473-06-D-1007-0025 for the Department of the Navy, Naval Facilities Engineering Command Southwest, San Diego, California.

2. Phase I Environmental Site Assessment; CPQH Phase VIII Parcel at Stuart Mesa; MCB Camp Pendleton, California. Prepared by InDepth Corporation for Camp Pendleton & Quantico Housing, LLC. December 2015.

3. Supplemental Environmental Assessment for Private Public Venture VII (CP7) Military Family Housing Marine Corps Base Camp Pendleton San Diego County, California. Prepared by U.S. Marine Corps. January 2014.

4. Finding of No Significant Impact (FONSI); Supplemental Environmental Assessment for the Construction and Operation of Military Family Housing, Marine Corps Base Camp Pendleton, San Diego County, California. Prepared by Department of Defense United States Marine Corps. 28 July 2015.

5. General Decision Number: CA140001 10/17/2014 CA1

6. Geotechnical Investigation Proposed New Stuart Mesa (Phase VIII) Housing, MCB Camp Pendleton Oceanside, San Diego County, California. Prepared by GeoSoils Inc. April 21, 2015

7. Storm Water Pollution Prevention Plan (SWPPP); Stuart Mesa, Camp Pendleton PPV Phase VIII Housing 3400 Mitchell Blvd., Oceanside, CA; Construction Contract Number: N68711-03-C-01M02. Prepared by Michael McGrath (QSD: 20194) SWPPP Prepared Date: 8/18/15.

8. Phase VIII Stuart Mesa Camp Pendleton Quantico Housing, LLC Closing Drawings:

   - Site Work - dated August 2015. Plans by
   - Architecture for 250 PPV Military Family Housing Units – dated 30 July 2015. Plans by
   - Architecture for Community Center – dated 30 July 2015. Plans by

EXHIBIT D

8075454

Exh. D-3

Exh. D-4

EXHIBIT E

EXHIBIT F

GOVERNMENTAL APPROVALS

The following constitute the approvals for which the Company is responsible prior to commencement of any construction activities by the Design/Builder:

Department of the Navy:

1. Prior to the commencement of construction, a demolition Plan will be submitted to and approved by the DoN.

2. Obtain written approval by the DoN on the Scope of Work Submittal Documents and the final Construction Documents. The Company and Design/Builder acknowledge that the DoN has provided such written approval on or prior to the Effective Date.

3. Provide all approvals and oversight, if necessary, to ensure that the Scope of Work as submitted by the Design/Builder satisfies all natural and cultural resources requirements as outlined in the Company documents.

Construction Consultant Review:

4. The Company shall execute a Construction Consultant Agreement with the Construction Consultant to perform the duties described in Section 5.07(b)(iii) of the Operating Agreement for the Project. The Design/Builder understands that such Construction Consultant Agreement shall also include certain code compliance review with respect to the applicable Unified Facilities Criteria (UFC) and Antiterrorism Standards more particularly set forth in the Scope of Work.

Utilities:

5. The Company is to provide all utility easements and services including, but not limited to water, sewer, telephone, power, gas, phone, data and CATV. In addition, the Company shall obtain any and all approvals from local jurisdictions, including the DoN, if necessary, to obtain approvals for the installation of new utilities, along with connecting, disconnecting or plugging PWC utilities.

Group Approvals:

6. Currently there are no known or required approvals from citizen groups, associations, etc.; however, should such approvals be required the Company shall obtain all necessary approvals from applicable citizen groups or associations.

7. Although the foregoing are the only approvals the Company and the Design/Builder believe are required to commence and complete the design and construction of the project, additional or different approvals may be required in the future. To the extent that such additional or different approvals are required relating to land use or the right

to construct the development on the Site, such approvals shall be the responsibility of the Company.

EXHIBIT G-1

[redacted]

EXHIBIT G-2

EXHIBIT H

<u>SCHEDULE</u>

[SEE ATTACHED]

EXHIBIT I

SITE DESCRIPTION

That certain land ground leased by the Company serving Marine Corps Base Camp Pendleton, San Diego County, California, commonly referred to as (i) the Phase VIII Stuart Mesa neighborhood and part of the Phase VIII Project (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-19 to the Amended and Restated Ground Lease, together with any improvements located thereon, and (ii) the Phase I Serra Mesa neighborhood and part of the Phase I Premises (as such term is defined in the Amended and Restated Ground Lease), as more particularly identified and described in Exhibit A-1a to the Amended and Restated Ground Lease, together with any improvements located thereon.

EXHIBIT J

PROCEDURES FOR REVIEW OF DESIGN MATERIALS

1. The Company acknowledges that the Schedule is "fast track" for design and construction. In order to accommodate the expedited nature of the Schedule and to avoid delays in the progress of the Work, the Company must make timely decisions and grant approvals for the Design Materials and Design Work when requested by the Design/Builder.

2. The Company will provide written approval within Days of requested review for Design Materials and Design Work. The Company acknowledges that the Architect and/or its consultants will not stop work during the review and approval period, and that delays in issuing review comments may impact the Substantial Completion dates given in Exhibit H. The Company will inform the Design/Builder of any element of the Design Material or Design Work that is not acceptable at the time of such review. If the Company does not provide a written response within the fourteen day review time, then afte Days written notice from the Design/Builder, the Company will have been deemed to approve the Design Materials or Design Work.

3. Except for the final Construction Documents, all Company approvals, comments, and/or modifications will be incorporated into the next document iteration. The Design/Builder and its Architect will not be required to produce revisions to review documents, unless said documents are unacceptable to the Company. Comments and/or modifications to the final Construction Documents will be incorporated and issued through addenda or modification of the relevant document.

EXHIBIT K

AUTHORIZED REPRESENTATIVES

Company Representatives:

Exh. K-2

EXHIBIT L

INSURANCE REQUIREMENTS

Prior to commencement of any work under this Agreement and, except as noted below, until the completion and final payment is made for the work, the Design/Builder, as a Cost of Work, shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance which protects the Design/Builder from claims which may arise from the work performed. Such insurance will be placed with insurance company or companies having an A.M. Best Rating of [redacted] Certificates of insurance will be furnished to the Company evidencing the required coverages as outlined below and will evidence the dates of such coverage. The Design/Builder will require each Subcontractor to obtain insurance coverage in types and amounts commensurate with industry practice and the scope of their respective subcontract.

1. Workers' Compensation and Employers Liability: Coverage to comply with the laws of California where the project is located and elsewhere as may be required. Coverage shall include:

2. Commercial General Liability Coverage: Coverage to include the following extensions;

3. Automobile Liability Coverage: Coverage for damages because of bodily injury, death or a person or persons, or property damage arising out of the ownership, maintenance or use of a motor vehicle.

4. Commercial Umbrella Liability: Coverage will apply excess of the Employer's Liability Limits, Commercial Automobile Liability Limits, and Commercial General Liability Limits. Coverage to be written on a following form (except for Products/Completed Operations)

5. Builder's Risk Coverage: [redacted]

7. The Design/Builder will endorse the Commercial General Liability, Automobile Liability and Umbrella Policies to include the Company and the DoN as additional insureds using ISO Form CG 20 10 or its equivalent. Coverage is to be endorsed to reflect that this insurance is to be primary and non-contributory for the Company, and the DoN, and shall include a waiver of subrogation for each of these entities.

8. The Design/Builder shall file certificates of insurance with the Company prior to the commencement of work and/or payment. Such Certificates shall be subject to the approval of the Company as to the adequacy of protection and qualifications of the insurer. In the event that the Design/Builder fails to furnish and maintain the required insurance and provide satisfactory evidence thereof, the Company shall provide a 10-Day written notice to the Design/Builder. Thereafter the Company shall have the right to purchase and maintain insurance coverage as required per this Exhibit L, and Design/Builder agrees to pay the cost of said insurance to the Company.

9. Company's Liability Insurance

   The Company shall be responsible for purchasing and maintaining the Company's usual liability insurance, if desired. Optionally, the Company may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Company's liability insurance unless specifically required by the Contract Documents.

EXHIBIT M
DESIGN GROUP MEMBERS

Exh. M-2

EXHIBIT N

FORM OF CONTRACTOR PAYMENT BOND AND PERFORMANCE BOND

[SEE ATTACHED]

act

EXHIBIT O

Exh. O

EXHIBIT P

DAVIS-BACON COMPLIANCE

Design/Builder Audit Procedure:

1. Design/Builder (which also may be referred to in this Exhibit P as "**Contractor**" or "**Prime Contractor**") shall comply with, and require subcontractors through their Subcontract Agreements to comply with, provisions of the Davis-Bacon Act and the Wage Decision applicable to the Site attached hereto as Appendix P-1, and the Payrolls and Basic Records provision. The provisions of the Davis-Bacon Act, as implemented by Federal Acquisition Regulation (FAR) 52.222-6, applicable to this Agreement are provided below.

2. Design/Builder shall require each subcontractor to submit their weekly payroll reports for the month to the Design/Builder no later than the 7th day after the date the subcontractor's employees are paid their last payment for the month. Subcontractors shall be advised that more frequent submissions may be required to resolve certain issues.

3. Design/Builder shall take appropriate action to ensure that employees performing work on the project are properly classified and listed on the reports, and that minimum wages and fringe benefits required by the Wage Decision are being paid. Design/Builder also shall be responsible for reconciling, as necessary, the subcontractor's payroll reports with its daily reports; conducting interviews, as appropriate, with subcontractor employees to verify actual wages being paid; and identifying discrepancies and possible violations.

4. Design/Builder shall notify subcontractors of discrepancies and possible violations, and ensure that corrective actions, if required, are taken within 30 days. If the Design/Builder and the subcontractor cannot resolve discrepancies or possible violations, or required corrective actions have not been taken within 30 days, the Design/Builder shall submit a report in detail to the Managing Member.

5. Design/Builder shall make all documents and materials, including its own certified payroll reports, notifications regarding discrepancies and possible violations, and records concerning all follow-up actions, available to Managing Member upon request.

6. Formal response by the Design/Builder to Department of Labor representatives, Congressional offices, or other interested parties shall be coordinated by the Managing Member with the Naval Facilities Engineering Command Business Agreement Manager for the project and Labor Advisor prior to responding.

7. **Construction Wage Rate Requirements (May 2014)**

(a) *Definition*.—"Site of the work"—

(1) Means--

(i) The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage

determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of Clause)

Any action on the part of the Contracting Officer will be arranged by the Naval Facilities Engineering Command Business Agreements Manager and Labor Advisor.

8. **Payrolls and Basic Records (May 2014)**

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at http://www.dol.gov/whd/forms/wh347.pdf. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social

security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer, the Company or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer, the Company or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer or the Company may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of Clause)

9. Additional clarification and guidance may be issued regarding the implementation and enforcement of the Davis-Bacon Act under the Design/Build Agreement.

APPENDIX P-1

DAVIS BACON WAGE DETERMINATION

a. CA140001 10/17/2014 CA1 - see attached for complete copy

General Decision Number: CA140001 10/17/2014 CA1

Superseded General Decision Number: CA20130001

State: California

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

County: San Diego County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	01/03/2014
1	01/10/2014
2	01/24/2014
3	02/21/2014
4	05/09/2014
5	05/23/2014
6	05/30/2014
7	06/20/2014
8	07/04/2014
9	07/11/2014
10	07/18/2014
11	07/25/2014
12	08/08/2014
13	08/22/2014
14	10/17/2014

ASBE0005-002 06/30/2014

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems)	$ 35.44	19.36
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls)	$ 24.34	16.09

ASBE0005-004 06/24/2013

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)	$ 16.95	10.23

BOIL0092-003 10/01/2012

	Rates	Fringes
BOILERMAKER	$ 41.17	28.27

BRCA0004-008 05/01/2014

	Rates	Fringes
BRICKLAYER; MARBLE SETTER	$ 34.10	15.05

BRCA0018-004 06/01/2014

	Rates	Fringes
MARBLE FINISHER	$ 28.45	11.38
TILE FINISHER	$ 23.78	9.84
TILE LAYER	$ 35.14	14.33

BRCA0018-010 09/01/2013

	Rates	Fringes
TERRAZZO FINISHER	$ 26.59	10.34
TERRAZZO WORKER/SETTER	$ 33.63	11.13

CARP0409-002 07/01/2008

	Rates	Fringes
Diver		
(1) Wet	$ 663.68	9.82
(2) Standby	$ 331.84	9.82
(3) Tender	$ 323.84	9.82
(4) Assistant Tender	$ 299.84	9.82

Amounts in "Rates' column are per day

CARP0409-008 08/01/2010

	Rates	Fringes
Modular Furniture Installer.....	$ 17.00	7.41

CARP0547-001 07/01/2009

	Rates	Fringes
CARPENTER		
(1) Bridge.....	$ 37.28	10.58
(2) Commercial Building....	$ 32.30	10.58
(3) Heavy & Highway.....	$ 37.15	10.58
(4) Residential Carpenter..	$ 25.84	10.58
(5) Residential Insulation Installer.....	$ 18.00	8.16
MILLWRIGHT.....	$ 37.65	10.58
PILEDRIVERMAN.....	$ 37.28	10.58

CARP0547-002 07/01/2009

	Rates	Fringes
Drywall		
(1) Work on wood framed construction of single family residences, apartments or condominiums under four stories		
Drywall Installer/Lather...	$ 21.00	8.58
Drywall Stocker/Scrapper...	$ 11.00	6.67
(2) All other work		
Drywall Installer/Lather...	$ 27.35	9.58
Drywall Stocker/Scrapper...	$ 11.00	6.67

ELEC0569-001 06/02/2014

	Rates	Fringes
Electricians (Tunnel Work)		
Cable Splicer.....	$ 44.91	3%+11.87
Electrician.....	$ 44.16	3%+11.87
Electricians: (All Other Work, Including 4 Stories Residential)		
Cable Splicer.....	$ 40.00	3%+11.87
Electrician.....	$ 39.25	3%+11.87

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* ELEC0569-005 09/01/2014

	Rates	Fringes

Sound & Communications
Sound Technician.....$ 28.82 3%+10.81
Soundman.....$ 23.06 3%+ 9.17

SOUND TECHNICIAN: Terminating, operating and performing final check-out

SOUNDMAN: Wire-pulling, splicing, assembling and installing devices

SCOPE OF WORK Assembly, installation, operation, service and maintenance of components or systems as used in closed circuit television, amplified master television distribution, CATV on private property, intercommunication, burglar alarm, fire alarm, life support and all security alarms, private and public telephone and related telephone interconnect, public address, paging, audio, language, electronic, background music system less than line voltage or any system acceptable for class two wiring for private, commercial, or industrial use furnished by leased wire, frequency modulation or other recording devices, electrical apparatus by means of which electricity is applied to the amplification, transmission, transference, recording or reproduction of voice, music, sound, impulses and video. Excluded from this Scope of Work - transmission, service and maintenance of background music. All of the above shall include the installation and transmission over fiber optics.

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* ELEC0569-006 10/06/2014

Work on street lighting; traffic signals; and underground systems and/or established easements outside of buildings

Rates Fringes

Traffic signal, street light
and underground work
Utility Technician #1.....$ 28.75 3%+7.42
Utility Technician #2.....$ 23.90 3%+7.42

STREET LIGHT & TRAFFIC SIGNAL WORK:

UTILITY TECHNICIAN #1: Installation of street lights and traffic signals, including electrical circuitry, programmable controller, pedestal-mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights and traffic signals.

UTILITY TECHNICIAN #2: Distribution of material at jobsite, installation of underground ducts for electrical, telephone, cable TV land communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

ELEC0569-008 06/03/2013

	Rates	Fringes
ELECTRICIAN (Residential, 1-3 Stories).....	$ 22.37	3%+3.30

ELEC1245-001 06/01/2013

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	$ 50.30	15.00
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	$ 40.17	14.56
(3) Groundman.....	$ 30.73	13.48
(4) Powderman.....	$ 44.91	13.48

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

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ELEV0018-001 01/01/2014

	Rates	Fringes
ELEVATOR MECHANIC.....	$ 49.03	26.785

FOOTNOTE:
PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

ENGI0012-003 07/07/2014

	Rates	Fringes

OPERATOR: Power Equipment
(All Other Work)

GROUP 1	$ 39.05	22.25
GROUP 2	$ 39.83	22.25
GROUP 3	$ 40.12	22.25
GROUP 4	$ 41.61	22.25
GROUP 5	$ 41.86	22.25
GROUP 6	$ 41.83	22.25
GROUP 8	$ 41.94	22.25
GROUP 9	$ 42.19	22.25
GROUP 10	$ 42.06	22.25
GROUP 11	$ 42.31	22.25
GROUP 12	$ 42.23	22.25
GROUP 13	$ 42.33	22.25
GROUP 14	$ 42.36	22.25
GROUP 15	$ 42.44	22.25
GROUP 16	$ 42.56	22.25
GROUP 17	$ 42.73	22.25
GROUP 18	$ 42.83	22.25
GROUP 19	$ 42.94	22.25
GROUP 20	$ 43.06	22.25
GROUP 21	$ 43.23	22.25
GROUP 22	$ 43.33	22.25
GROUP 23	$ 43.44	22.25
GROUP 24	$ 43.56	22.25
GROUP 25	$ 43.73	22.25

OPERATOR: Power Equipment
(Cranes, Piledriving &
Hoisting)

GROUP 1	$ 40.40	22.25
GROUP 2	$ 41.18	22.25
GROUP 3	$ 41.47	22.25
GROUP 4	$ 41.61	22.25
GROUP 5	$ 41.83	22.25
GROUP 6	$ 41.94	22.25
GROUP 7	$ 42.06	22.25
GROUP 8	$ 42.23	22.25
GROUP 9	$ 42.40	22.25
GROUP 10	$ 43.40	22.25
GROUP 11	$ 44.40	22.25
GROUP 12	$ 45.40	22.25
GROUP 13	$ 46.40	22.25

OPERATOR: Power Equipment
(Tunnel Work)

GROUP 1	$ 40.90	22.25
GROUP 2	$ 41.68	22.25
GROUP 3	$ 41.97	22.25
GROUP 4	$ 42.11	22.25
GROUP 5	$ 42.33	22.25
GROUP 6	$ 42.44	22.25
GROUP 7	$ 42.56	22.25

PREMIUM PAY:

$3.75 per hour shall be paid on all Power Equipment Operator work on the followng Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: $2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter(concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired

earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine);

Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: $1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds.and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar

types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western

or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons);

Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N,m R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32,

T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point whch is the SW corner of Section 34.T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo

County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

ENGI0012-004 08/01/2014

	Rates	Fringes
OPERATOR: Power Equipment (DREDGING)		
(1) Leverman	$ 48.60	22.40
(2) Dredge dozer	$ 42.63	22.40
(3) Deckmate	$ 42.52	22.40
(4) Winch operator (stern winch on dredge)	$ 41.97	22.40
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand	$ 41.43	22.40
(6) Barge Mate	$ 42.04	22.40

IRON0377-002 07/01/2014

	Rates	Fringes
Ironworkers:		
Fence Erector	$ 26.58	17.74
Ornamental, Reinforcing and Structural	$ 33.50	26.74

PREMIUM PAY:

$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LABO0089-001 07/01/2013

	Rates	Fringes
LABORER (BUILDING and all other Residential Construction)		
Group 1	$ 26.98	15.42
Group 2	$ 27.66	15.42
Group 3	$ 28.37	15.42
Group 4	$ 29.17	15.42
Group 5	$ 31.10	15.42
LABORER (RESIDENTIAL CONSTRUCTION - See definition below)		
(1) Laborer	$ 24.88	13.75
(2) Cleanup, Landscape, Fencing (Chain Link & Wood)	$ 23.59	13.75

RESIDENTIAL DEFINITION: Wood or metal frame construction of single family residences, apartments and condominums - excluding (a) projects that exceed three stories over a garage level, (b) any utility work such as telephone, gas,

water, sewer and other utilities and (c) any fine grading work, utility work or paving work in the future street and public right-of-way; but including all rough grading work at the job site behind the existing right of way

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete Screeding for Rought Strike-off; Concrete, water curing; Demolition laborer; Flagman; Gas, oil and/or water pipeline laborer; General Laborer; General clean-up laborer; Landscape laborer; Jetting laborer; Temporary water and air lines laborer; Material hoseman (walls, slabs, floors and decks); Plugging, filling of Shee-bolt holes; Dry packing of concrete; Railroad maintenance, Repair Trackman and road beds, Streetcar and railroad construction trac laborers; Slip form raisers; Slurry seal crews (mixer operator, applicator operator, squeegee man, Shuttle man, top man), filling of cracks by any method on any surface; Tarman and mortar man; Tool crib or tool house laborer; Window cleaner; Wire Mesh puling-all concrete pouring operations

GROUP 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute man, pouring concrete, the handling of the cute from ready mix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks; Concrete curer-impervious membrane and form oiler; Cutting torch operator (demoliton); Guinea chaser; Headboard man-asphlt; Laborer,
packing rod steel and pans; membrane vapor barrier installer; Power broom sweepers (small); Riiprap, stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Tank sealer and cleaner; Tree climber, faller, chain saw operator, Pittsburgh Chipper and similar type brush shredders; Underground laborers, including caisson bellower

GROUP 3: Buggymobile; Concrete cutting torch; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2 1/2 feet drill steel or longer; Dri Pak-it machine; High sealer (including drilling of same); Hydro seeder and similar type; Impact wrench, mult-plate; Kettlemen, potmen and mean applying asphalt, lay-kold, creosote, line caustic and similar type materials (applying means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, vibratring machines, pavement breakers, air blasting, come-along, and similar mechanical tools not separately classified herein; Pipelayers back up man coating, grouting, making of joints, sealing, caulking, diapering and inclduing rubber gasket joints, pointing and any and all other services; Rotary Scarifier or multiple head concrete chipping scaarifier; Steel header board man

and guideline setter; Tampers, Barko, Wacker and similar type; Trenching machine, handpropelled

GROUP 4: Asphalt raker, luterman, ironer, apshalt dumpman and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), Grinder or sander; Concrete saw man; cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Laser beam in connection with laborer's work; Oversize concrete vibrator operator 70 pounds and over; Pipelayer performing all services in the laying, installation and all forms of connection of pipe from the point of receiving pipe in the ditch until completion of oepration, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid, gas, air or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzleman), Porta shot-blast, water blasting

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all pwder and explosives of whatever type, regardless of method used for such loading and placing; Driller-all power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power.

LABO0089-002 11/01/2012

	Rates	Fringes
LABORER (MASON TENDER).....	$ 27.98	13.39

LABO0089-004 07/01/2013

HEAVY AND HIGHWAY CONSTRUCTION

	Rates	Fringes
Laborers:		
Group 1.....	$ 26.98	15.42
Group 2.....	$ 27.66	15.42
Group 3.....	$ 28.37	15.42
Group 4.....	$ 29.17	15.42
Group 5.....	$ 31.10	15.42

LABORER CLASSIFICATIONS

GROUP 1: Laborer: General or Construction Laborer, Landscape Laborer. Asphalt Rubber Material Loader. Boring Machine Tender (outside), Carpenter Laborer (cleaning, handling, oiling & blowing of panel forms and lumber), Concrete Laborer, Concrete Screeding for rough strike-off, Concrete water curing. Concrete Curb & Gutter laborer, Certified Confined Space Laborer, Demolition laborer & Cleaning of Brick and lumber,Expansion Joint Caulking; Environmental Remediation, Monitoring Well, Toxic waste and Geotechnical Drill tender, Fine Grader, Fire Watcher, Limbers, Brush Loader, Pilers and Debris Handlers. flagman. Gas Oil and Water Pipeline Laborer. Material Hoseman (slabs, walls, floors, decks); Plugging, filling of shee bolt holes; Dry packing of concrete and patching; Post Holer Digger (manual); Railroad maintenance, repair trackman, road beds; Rigging & signaling; Scaler, Slip-Form Raisers, Filling cracks on any surface, tool Crib or Tool House Laborer, Traffic control (signs, barriers, barricades, delineator, cones etc.), Window Cleaner

GROUP 2: Asphalt abatement; Buggymobile; Cement dumper (on 1 yd. or larger mixers and handling bulk cement); Concrete curer, impervious membrane and form oiler; Chute man, pouring concrete; Concrete cutting torch; Concrete pile cutter; driller/Jackhammer, with drill steel 2 1/'2 feet or longer; Dry pak-it machine; Fence erector; Pipeline wrapper, gas, oil, water, pot tender & form man; Grout man; Installation of all asphalt overlay fabric and materials used for reinforcing asphalt; Irrigation laborer; Kettleman-Potman hot mop, includes applying asphalt, lay-klold, creosote, lime caustic and similar tyhpes of materials (dipping, brushing, handling) and waterproofing; Membrane vapor barrier installer; Pipelayer backup man (coating, grouting, making of joints, sealing caulkiing, diapering including rubber basket joints, pointing); Rotary scarifier, multiple head concrete chipper; Rock slinger; Roto scraper & tiller; Sandblaster pot tender; Septic tank digger/installer; Tamper/wacker operator; Tank scaler & cleaner; Tar man & mortar man; Tree climber/faller, chainb saw operator, Pittsburgh chipper & similar type brush shredders.

GROUP 3: Asphalt, installation of all frabrics; Buggy Mobile Man, Bushing hammer; Compactor (all types), Concrete Curer - Impervious membrane, Form Oiler, Concrete Cutting Torch, Concrete Pile Cutter,Driller/Jackhammer with drill steel 2 1/2 ft or longer, Dry Pak-it machine, Fence erector including manual post hole digging, Gas oil or water Pipeline Wrapper - 6 ft pipe and over, Guradrail erector, Hydro seeder, Impact Wrench man (multi plate), kettleman-Potman Hot Mop includes applying Asphalt, Lay-Kold, Creosote, lime caustic and similar types of materials (dipping, brushing or handling) and waterproofing. Laser Beam in connection with Laborer work.

High Scaler, Operators of Pneumatic Gas or Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs and similar mechanical tools, Remote-Controlled Robotic Tools in connection with Laborers work. Pipelayer Backup Man (Coating, grouting,m makeing of joints, sealing, caulking, diapering including rubber gasket joints, pointing and other services). Power Post Hole Digger, Rotary Scarifier (multiple head concrete chipper scarifier), Rock Slinger, Shot Blast equipment (8 to 48 inches), Steel Headerboard Man and Guideline Setter, Tamper/Wacker operator and similar types, Trenching Machine hand propelled.

GROUP 4: Any worker exposed to raw sewage. Asphalt Raker, Luteman, Asphalt Dumpman, Asphalt Spreader Boxes, Concrete Core Cutter, Concrete Saw Man, Cribber, Shorer, Head Rock Slinger. Installation of subsurface instrumentation, monitoring wells or points, remediation system installer; Laborer, asphalt-rubber distributor bootman; Oversize concrete vibrator operators, 70 pounds or over. Pipelayer, Prfefabricated Manhole Installer, Sandblast Nozzleman (Water Balsting-Porta Shot Blast), Traffic Lane Closure.

GROUP 5: Blasters Powderman-All work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Horizontal directional driller, Boring system, Electronic traking, Driller: all power drills excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and all other types of mechanical drills without regard to form of motive power. Environmental remediation, Monitoring well, Toxic waste and Geotechnical driller, Toxic waste removal. Welding in connection with Laborer's work.

LABO0300-005 01/01/2014

	Rates	Fringes
Asbestos Removal Laborer.....	$ 28.00	15.25

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LABO1184-001 07/01/2014

	Rates	Fringes

Laborers: (HORIZONTAL
DIRECTIONAL DRILLING)
(1) Drilling Crew Laborer...$ 31.65 13.33
(2) Vehicle Operator/Hauler.$ 31.82 13.33
(3) Horizontal Directional
Drill Operator.....$ 33.67 13.33
(4) Electronic Tracking
Locator.....$ 35.67 13.33
Laborers: (STRIPING/SLURRY
SEAL)
GROUP 1.....$ 32.56 16.28
GROUP 2.....$ 33.86 16.28
GROUP 3.....$ 35.87 16.28
GROUP 4.....$ 37.61 16.28

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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LABO1414-003 08/07/2013

Rates Fringes

LABORER
PLASTER CLEAN-UP LABORER....$ 27.45 16.36
PLASTER TENDER.....$ 30.00 16.36

Work on a swing stage scaffold: $1.00 per hour additional.

Work at Military Bases - $3.00 additional per hour:
Coronado Naval Amphibious Base, Fort Irwin, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

PAIN0036-001 07/01/2014

Rates Fringes

Painters: (Including Lead Abatement)
(1) Repaint (excludes San Diego County).....$ 26.89 12.28
(2) All Other Work.....$ 30.27 12.28

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

PAIN0036-010 01/01/2014

Rates Fringes

DRYWALL FINISHER/TAPER
(1) Building & Heavy Construction.....$ 25.69 13.79
(2) Residential Construction (Wood frame apartments, single family homes and multi-duplexes up to and including four stories).....$ 21.00 13.41

PAIN0036-012 10/01/2013

Rates Fringes

GLAZIER.....$ 38.80 17.25

PAIN0036-019 07/01/2014

Rates Fringes

SOFT FLOOR LAYER.....$ 26.77 12.75

PLAS0200-005 08/06/2014

Rates Fringes

PLASTERER.....$ 37.43 13.28

NORTH ISLAND NAVAL AIR STATION, COLORADO NAVAL AMPHIBIOUS BASE, IMPERIAL BEACH NAVAL AIR STATION: $3.00 additional per hour.

PLAS0500-001 07/01/2014

Rates Fringes

CEMENT MASON/CONCRETE FINISHER
GROUP 1.....$ 22.29 17.10
GROUP 2.....$ 23.94 17.10
GROUP 3.....$ 26.57 17.25

CEMENT MASONS - work inside the building line, meeting the following criteria:

GROUP 1: Residential wood frame project of any size; work classified as Type III, IV or Type V construction; interior tenant improvement work regardless the size of the project; any wood frame project of four stories or less.

GROUP 2: Work classified as type I and II construction

GROUP 3: All other work

PLUM0016-006 07/01/2014

Rates Fringes

PLUMBER, PIPEFITTER, STEAMFITTER
Camp Pendleton.....$ 49.21 20.36
Plumber and Pipefitter
All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light

commercial, tenant
improvement and remodel
work.....$ 44.71 20.36
Work ONLY on new additions
and remodeling of
commercial buildings,
bars, restaurants, and
stores not to exceed 5,000
sq. ft. of floor space.....$ 43.33 19.38
Work ONLY on strip malls,
light commercial, tenant
improvement and remodel
work.....$ 34.59 17.71

PLUM0016-011 07/01/2014

Rates Fringes

PLUMBER/PIPEFITTER
Residential.....$ 36.15 16.28

PLUM0345-001 07/01/2014

Rates Fringes

PLUMBER
Landscape/Irrigation Fitter.$ 29.27 19.75
Sewer & Storm Drain Work....$ 33.24 17.13

ROOF0045-001 07/01/2012

Rates Fringes

ROOFER.....$ 25.08 7.28

SFCA0669-001 07/01/2013

Rates Fringes

SPRINKLER FITTER.....$ 34.86 18.66

SHEE0206-001 01/01/2012

Rates Fringes

SHEET METAL WORKER
Camp Pendleton.....$ 35.05 19.23
Except Camp Pendleton.....$ 33.05 19.23
Sheet Metal Technician.....$ 25.22 6.69

SHEET METAL TECHNICIAN - SCOPE:
a. Existing residential buildings, both single and multi-family, where each unit is heated and/or cooled by a separate system b. New single family residential buildings

including tracts. c. New multi-family residential buildings, not exceeding five stories of living space in height, provided each unit is heated or cooled by a separate system. Hotels and motels are excluded. d. LIGHT COMMERCIAL WORK: Any sheet metal, heating and air conditioning work performed on a project where the total construction cost, excluding land, is under $1,000,000 e. TENANT IMPROVEMENT WORK: Any work necessary to finish interior spaces to conform to the occupants of commercial buildings, after completion of the building shell

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TEAM0036-001 07/01/2012

	Rates	Fringes
Truck drivers:		
GROUP 1	$ 15.40	20.50
GROUP 2	$ 24.99	20.50
GROUP 3	$ 25.19	20.50
GROUP 4	$ 25.39	20.50
GROUP 5	$ 25.59	20.50
GROUP 6	$ 26.09	20.50
GROUP 7	$ 27.59	20.50

FOOTNOTE: HAZMAT PAY: Work on a hazmat job, where hazmat certification is required, shall be paid, in addition to the classification working in, as follows: Levels A, B and C - +$1.00 per hour. Workers shall be paid hazmat pay in increments of four (4) and eight (8) hours.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Fuel Man, Swamper

GROUP 2: 2-axle Dump Truck, 2-axle Flat Bed,Concrete Pumping Truck, Industrial Lift Truck, Motorized Traffic Control, Pickup Truck on Jobsite

GROUP 3: 2-axle Water Truck, 3-axle Dump Truck, 3-axle Flat Bed, Erosion Control Nozzleman, Dump Crete Truck under 6.5 yd, Forklift 15,000 lbs and over, Prell Truck, Pipeline Work Truck Driver, Road Oil Spreader, Cement Distributor or Slurry Driver, Bootman, Ross Carrier

GROUP 4: Off-road Dump Truck under 35 tons 4-axles but less than 7-axles, Low-Bed Truck & Trailer, Transit Mix Trucks under 8 yd, 3-axle Water Truck, Erosion Control Driver, Grout Mixer Truck, Dump Crete 6.5yd and over, Dumpster Trucks, DW 10, DW 20 and over, Fuel Truck and Dynamite, Truck Greaser, Truck Mounted Mobile Sweeper 2-axle Winch Truck

GROUP 5: Off-road Dump Truck 35 tons and over, 7-axles or more, Transit Mix Trucks 8 yd and over, A-Frame Truck, Swedish Cranes

GROUP 6: Off-Road Special Equipment (including but not limited to Water Pull Tankers, Athey Wagons, DJB, B70 Wuclids or like Equipment)

GROUP 7: Repairman

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION